

**Report of the Special Rapporteur on the sale and sexual exploitation of children, including prostitution, child pornography and other child sexual abuse material**

***Call for input: Reparation for child victims and survivors of sale and sexual exploitation***

UNICEF welcomes the opportunity to provide input into the Special Rapporteur's forthcoming report. UNICEF suggests framing the issue of reparations within the overall issue of **children's access to justice**, defined as one's ability to seek and obtain a remedy to violations of one's rights. While millions of children have their rights violated every day, only a fraction come forward and seek redress and even fewer obtain an effective remedy.

Article 2.3 of the International Covenant on Civil and Political Rights, which applies to all human beings including children, establishes that any person whose rights or freedoms are violated has a right to an effective remedy.<sup>1</sup> The Human Rights Committee has further noted that '*remedies should be appropriately adapted to take account of the special vulnerabilities of certain categories of persons, including in particular children*'.<sup>2</sup>

In its General Comment No. 5, the Committee on the Rights of the Child state that:

*'...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'. [...] the Committee emphasizes that economic, social and cultural rights, as well as civil and political rights, must be regarded as justiciable. It is essential that domestic law sets out entitlements in sufficient detail to enable remedies for non-compliance to be effective'* [emphasis added].<sup>3</sup>

<sup>1</sup> A similar provision is found in Article 8 of the Universal Declaration of Human Rights.

<sup>2</sup> Human Rights Committee (2004) General Comment No. 31 on the nature of the general legal obligation imposed on State Parties to the Covenant, para 15.

<sup>3</sup> UN Committee on the Rights of the Child (2003) General Comment No. 5 on General Measures of Implementation of the Convention on the Rights of the Child, para 24.

## **Gaps and challenges**

Children everywhere face extraordinary obstacles in accessing justice. Research shows that children not only face the same obstacles to justice as adults, but also other specific additional obstacles. UNICEF's report on *Children's Equitable Access to Justice in Central and Eastern Europe and Central Asia*<sup>4</sup> covering Albania, Georgia, Kyrgyzstan and Montenegro, for example, identified the following key barriers to children's access to justice:<sup>5</sup>

- *Access to justice for children is largely affected by their age and dependent status:* Children have less knowledge, fewer financial resources and are generally less equipped to deal with the complexity of the justice system. Children depend on adults to receive information about their rights, navigate and understand available remedies, and access justice forums and mechanisms. Costs related to lawyers, court fees and transportation are obstacles that affect children disproportionately. Standing (right to initiate and 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 guardian to do so on their behalf. Age restrictions and the need for parental approval to bring proceedings unduly limits children's access to remedies and to the right to participate in proceedings that affect them as provided by Article 12 of the Convention on the Rights of the Child.
- *Justice systems are generally not adapted to children's rights:* Many countries do not have specialized children's courts, nor fully specialized judges, prosecutors and investigators to handle cases involving children. In most countries, legislation and procedures concerning the treatment of children participating in justice processes (other than juvenile justice) have not been adapted to their particular rights and needs. As a result, children may appear in court without legal assistance<sup>6</sup>, without a support person and without proper information on the process. Legal proceedings concerning children often are lengthy: it is not uncommon that they would last for a year or more.

Proceedings concerning children are not necessarily closed to the public and child

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<sup>4</sup> United Nations Children's Fund, The Regional Office for Central and Eastern Europe and the Commonwealth of Independent States (2015) *Children's Equitable Access to Justice: Central and Eastern Europe and Central Asia* <<https://www.unicef.org/eca/reports/childrens-equitable-access-justice-central-and-eastern-europe-and-central-asia>>.

<sup>5</sup> The justice system is understood in its broad sense: criminal civil and administrative; judicial and non-judicial (e.g. mediation processes or Ombudsman offices); State and non-State such as the traditional mechanisms.

<sup>6</sup> Most legislation does not recognize the right of child victims or parties to legal or other assistance.

victims could be put in direct confrontation with accused perpetrators. In this context, the justice system risks victimizing children for the second time and generating further harm rather than redress. It also may discourage children and their families to seek justice.

- *Children and their families know little about child rights and where to seek redress:* The study revealed poor understanding among children and their families both of children's rights and how/where to seek help in specific situations. Caregivers also mentioned that they lacked sufficient information to support children in accessing justice. This is even more pronounced among children in vulnerable situations.
- *Access to justice for children is negatively affected by social and cultural beliefs:* Cultural tolerance of violence can negatively impact children's access to justice. In the case of children, violence may be considered a legitimate means to discipline and educate children for their overall benefit. Most children do not ask for help, possibly because they perceive violence as a normal phenomenon and do not see themselves as victims of abuse. Violence against children is considered a fact of life, or a legitimate disciplinary technique rather than a rights violation. 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. Across Albania, Georgia, Kyrgyzstan and Montenegro, 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. Children are also considered as having a lower status in society. Within the family, children are used to obeying and not expressing themselves. In such a context, it is almost inconceivable for children to complain when they have been abused.
- *Some groups of children are more affected than others:* Discrimination can be an obstacle to access to justice, including discriminatory attitudes of parents towards the rights of girls, and discriminatory attitudes of the authorities towards the poor and minorities. Children with disabilities often face additional barriers, for example, in terms of physical access or access to information. When interviewed, children said that their main reasons for not approaching justice were: (1) they did not understand the procedures; (2) they thought that they would not be taken seriously or listened to; (3) they thought that it would not be useful, and nothing would change. Children and families

also mentioned general distrust in State institutions, especially the police, and fear of negative consequences.

### Victims and survivors of child sexual abuse and exploitation

Victims and survivors of child sexual abuse and exploitation have specific needs and face particular challenges. Key to holistic recovery is appropriate victim support, rehabilitation and reintegration services, and redress for abuse. Article 39 of the Convention on the Rights of the Child requires State parties to adopt measures that promote the *‘physical and psychological recovery and social reintegration of a child victim’*, and this must take place *‘in an environment [that] fosters the health, self-respect and dignity of the child’*. This is reflected in Article 9.3 of the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (‘OPSC’) which provides that *‘States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims ... including their full social reintegration and their full physical and psychological recovery’*. The Guidelines regarding the implementation of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (‘OPSC Guidelines’) go further and provide that: *‘It is crucial, through legislation, to ..... secure the availability of child- and gender-sensitive, confidential and safe counselling, ..... to address incidents of sexual exploitation and sexual abuse and protect victims’*.<sup>7</sup>

The particularities of child sexual exploitation and abuse with an online or digital dimension can bring about additional or different impacts. In its General Comment 25, the Committee on the Rights of the Child states that specialized protections may be required to *‘redress harms associated with the digital environment’*.<sup>8</sup> There may be a difference in terms of the impact and trauma suffered online as compared to ‘offline’ sexual abuse cases. For example, the continued existence and circulation of images and videos of a child’s abuse online may *‘impact the recovery and reintegration process and may increase the need for long-term psychological counselling and social services’*.<sup>9</sup> In recognition of this, the OPSC Guidelines call for States parties to adopt *‘adequate measures to provide long-term social and psychological services as needed’* [emphasis added].<sup>10</sup> The OPSC Guidelines also encourage States parties to give

<sup>7</sup> UN Committee on the Rights of the Child (2019) OPSC Guidelines, para 17.

<sup>8</sup> UN Committee on the Rights of the Child (2021) General Comment No. 25 on children’s rights in relation to the digital environment, para 45.

<sup>9</sup> ECPAT (2020) *Summary Paper on Online Child Sexual Exploitation*, ECPAT International, Bangkok, p. 22.

<sup>10</sup> UN Committee on the Rights of the Child (2019) OPSC Guidelines, para 102.

*'specific consideration'* to children marginalized by their contexts, explicitly referring to gender identities, children with disabilities, and children on the move, among others.<sup>11</sup> The OPSC Guidelines recommend that States develop a comprehensive continuum of care and support for the child victim, including post-trial reintegration services to help limit the trauma caused by their abuse, as well as prevent revictimization.<sup>12</sup>

In its General Comment No. 25, the Committee on the Rights of the Child reflects the approach taken in the OPSC Guidelines and recommends that States parties *'establish, coordinate and regularly monitor and evaluate frameworks for ... the provision of effective support to children who are victims'*.<sup>13</sup> This framework should include *'multiagency and child-friendly'* measures that facilitate the *'therapy and follow-up care for, and the social reintegration of children who are victims'*.<sup>14</sup>

Significant challenges and gaps exist with respect to remedies or reparations for victims and survivors of child sexual abuse and exploitation. UNICEF and WeProtect's report *Framing the Future* found that of 42 countries surveyed, almost 20 per cent of countries (8 of 42) had no effective remedies or reparations for victims and survivors of child sexual exploitation and abuse.<sup>15</sup> The findings also revealed that the terms 'remedy', 'redress', 'reparation', 'restitution' and 'compensation' have different meanings in different countries and are associated with distinct legal processes. A restitution order, for example, forms part of an offender's sentence. Some jurisdictions have criminal injury compensation programmes for victims of crime. Requirements, application processes, eligibility, and the types of awards available vary by jurisdiction. In some countries, a victim may also be entitled to compensation from their insurance company.

Even in countries where remedies or reparations exist, they are not necessarily comprehensive or sufficient. While children may be entitled to remedies or reparations under law and policy, services may not be available in their community or to all who need them. In some countries, NGOs provide advocacy and other services, not the state. In many contexts, it is rare for

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<sup>11</sup> UN Committee on the Rights of the Child (2019) OPSC Guidelines, para 13.

<sup>12</sup> UN Committee on the Rights of the Child (2019) OPSC Guidelines, para 100(b).

<sup>13</sup> UN Committee on the Rights of the Child (2021) General Comment No. 25 on children's rights in relation to the digital environment, para 45.

<sup>14</sup> Ibid.

<sup>15</sup> WeProtect Global Alliance and United Nations Children's Fund (2022) *Framing the future: How the Model National Response framework is supporting national efforts to end child sexual exploitation and abuse online*, p. 60  
<<https://www.unicef.org/reports/framing-future>>

children to turn to professionals or authorities in cases of sexual abuse. Children receive little information about their rights and about how to claim them.<sup>16</sup>

There is a need to step up efforts to support child-friendly remedies and reparations for victims/survivors with a view to ensuring justice for children and aiding their holistic recovery. This includes ensuring the effective implementation of existing remedy and compensation systems, including through awareness-raising for victims and their families on the existence of the services and how to access them; investing in legal rights awareness for children; facilitating the expansion of free legal aid for children and building national cadres of specialized lawyers and paralegal services.<sup>17</sup>

### Child marriage

In developing a comprehensive accountability framework for child marriage, the need to go beyond criminal justice and courts is well recognized.<sup>18</sup> Girls exposed to child marriage, including those who are married, may need support to maintain or return to education, including technical and vocational education. Educational institutions offer girls support networks and reduce their exposure to the heightened level of family and domestic violence while they spend more time at home. There is also a need to protect girls' economic security and that of their families, including through equal access to social protection, employment and financial services. Access to employment opportunities and social protection programmes including financial services helps girls build their economic assets. Other critical needs include access to health services, including services related to sexual and reproductive health; food and nutrition security; and access to safe and affordable drinking water. It is also vital to ensure their free, active and meaningful participation in decision-making on all issues affecting them, particularly when developing and implementing coordinated responses and strategies to redress child marriage.

There is a lack of legal protection for girls exposed to child marriage, including those who are married. It is critical to enforce existing legislation and address loopholes that allow underage

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<sup>16</sup> Ibid.

<sup>17</sup> United Nations Children's Fund (2021) *Ending online child sexual exploitation and abuse: Lessons learned and promising practices in low- and middle-income countries*, UNICEF, New York, p. 37  
<<https://www.unicef.org/documents/ending-online-child-sexual-exploitation-and-abuse>>.

<sup>18</sup> Report of the United Nations High Commissioner for Human Rights (2022) Comprehensive approach to promoting, protecting and respecting women's and girls' full enjoyment of human rights in humanitarian situations, A/HRC/49/37, para 52.

unions with parental or judicial consent. The coexistence of customary or religious laws that allow underage marriages or unions, and the social recognition of non-registered unions need to be addressed.

The lack of coherence in policies affects access to health, social protection, legal protection and education support for child victims and survivors of child marriage. For instance, several countries lack policies that encourage girls who have given birth to return to class. In other cases, married girls are denied access to adequate health care and social protection services due to their current age. Discrimination and stigma in access to these services due to the age of the child victims and survivors must be eradicated.

### **Forms of reparations**

Child victims and survivors should have access to different forms and platforms of compensation. Article 9.4 of the OPSC provides that '*State parties shall ensure that all child victims .... have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.*' In the OPSC Guidelines, the Committee on the Rights of the Child recommends that States parties should carefully consider which form of compensation is preferable for each child victim depending on their circumstances.

Compensation could be financial or come in other forms, such as support for education or income-generating activities.<sup>19</sup> In its later General Comment No. 25, the Committee on the Rights of the Child explains that appropriate reparation for damage includes restitution, compensation, and satisfaction, which can take, for instance, the form of apology, correction, removal of unlawful content or access to psychological recovery services or other measures.<sup>20</sup>

Out-of-court settlements as an alternative to criminal proceedings may on occasion seem attractive but should not be encouraged. It has been reported that many cases concerning the online sexual exploitation of children have been resolved through informal '*compromises*' in which perpetrators pay child victims to avoid legal action.<sup>21</sup> This is often seen as attractive to the child and the family since poverty is a significant risk factor for sexual exploitation. Payment to a victim to avoid criminal prosecution and/or penalties should be strongly discouraged and

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<sup>19</sup> UN Committee on the Rights of the Child (2019) OPSC Guidelines, para 106.

<sup>20</sup> UN Committee on the Rights of the Child (2021) General Comment No. 25 on children's rights in relation to the digital environment, para 46.

<sup>21</sup> United Nations Children's Fund, Regional Office for South Asia (2016) *Victims Are Not Virtual: Situation assessment of online child sexual exploitation in South Asia*, p. 34 <<https://www.unicef.org/rosa/reports/victims-are-not-virtual>>.

opposed by law enforcement, social workers, the judiciary, and other relevant officials, not only for the sake of the victim but also for future potential victims.<sup>22</sup>

### Child marriage

For girls exposed to child marriage, including those who are married, forms of reparation may include support to enrol and/or return to school, including the provision of cash transfers, bursaries, stipends, scholarships, and subsidizing or eliminating costs of textbooks, uniforms, transport, and hidden, voluntary, or school administrative charges; provision of employment opportunities, vocational or technical training, and access to gender-responsive social protection programmes including financial services; provision and access to free or affordable quality girl-friendly health services, including services related to sexual and reproductive health; and provision and access to free legal protection services, including information to enhance legal literacy.

### The roles of state, non-state and individual actors

Many actors and agencies are involved when a case concerning the sexual exploitation or abuse of a child is referred or investigated, including law enforcement, social services, and children's services. In its General Comment No. 25, the Committee on the Rights of the Child outlines how frameworks and services provided to child victims should be '*multiagency and child-friendly*'.<sup>23</sup> ECOSOC Resolution 2005/20 also recommends that professionals:

*'...make every effort to adopt an interdisciplinary and cooperative approach in aiding children by familiarizing themselves with the wide array of available services, such as victim support, advocacy, economic assistance, counselling, education, health, legal and social services. This approach may include protocols for the different stages of the justice process to encourage cooperation among entities that provide services to child victims and witnesses, as well as other forms of multidisciplinary work that includes police, prosecutor, medical, social services and psychological personnel.'*<sup>24</sup>

<sup>22</sup> United Nations Children's Fund (2022) *Legislating for the digital age: Global guide on improving legislative frameworks to protect children from online sexual exploitation and abuse*, UNICEF, New York, p. 150 <<https://www.unicef.org/reports/legislating-digital-age>>.

<sup>23</sup> UN Committee on the Rights of the Child (2021) General Comment No. 25 on children's rights in relation to the digital environment, para 45.

<sup>24</sup> ECOSOC Resolution 2005/20: Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime, para 43.



Collaboration may be relatively low level, involving information sharing, the exchange of resources, or simply referral between the services. There are, however, advantages to joint working between agencies, professionals, or services. For example, the WeProtect Model National Response framework recommends that States consider embedding social workers within law enforcement units dealing with child sexual exploitation and abuse investigations because it ensures that child protection needs are prioritized throughout the process.<sup>25</sup> States parties should develop standard operating procedures / joint working protocols that set out the different roles and responsibilities of the various agencies and how the different agencies are expected to work together.<sup>26</sup>

### Child marriage

State institutions have a deep impact on the private behaviour of individuals. In the case of child marriage, for example, law enforcement by state institutions can ensure that families delay the marriage of their daughters until after the age of 18. State institutions are also responsible for effectively delivering public services that empower and inform girls and their families. For instance, social protection programmes that include cash transfers can incentivize families to enrol and/or retain their daughters exposed to child marriage in school to transition to the secondary level. Public services are critical to addressing multiple, often intersecting, inequalities that sustain the practice of child marriage. Non-state and individual actors play a crucial role in addressing social and gender norms that sustain the practice of child marriage. These social and gender norms tend to influence girls' and their families' abilities to gain access to public services and abide by the laws and regulations.

### Good practice examples

In 2021, UNICEF supported 121 countries to strengthen justice system reform. This included ensuring access to specialized services for child survivors and witnesses of crime; making justice systems more responsive to and protective of children; strengthening legislation and the legal empowerment of children. The number of countries that have special measures for these children has grown exponentially, increasing by 45 per cent since 2017 (from 53 countries in 2017 to 77 in 2021). Of note is the growing proportion of justice professionals certified in and

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<sup>25</sup> WeProtect Global Alliance (2016) *Preventing and Tackling Child Sexual Exploitation and Abuse (CSEA): A Model National Response*, p. 18.

<sup>26</sup> United Nations Children's Fund (2022) *Legislating for the digital age: Global guide on improving legislative frameworks to protect children from online sexual exploitation and abuse*, UNICEF, New York, p. 147 <<https://www.unicef.org/reports/legislating-digital-age>>.

able to support child survivors, which has increased from 55 per cent in 2017 (in 25 countries) to 70 per cent in 2021 (in 49 countries).<sup>27</sup>

In **Zambia**, guidelines for the protection of child survivors and witnesses of crime in justice processes were used to train 115 front-line officers from the police, social welfare, health and justice sectors. In **Egypt**, UNICEF supported the Office of the Prosecutor General in developing guidelines for protection of child survivors and witnesses of crime. In **Morocco**, UNICEF supported a pilot programme to introduce a new recording system for testimonies of child survivors of violence to improve child-friendly procedures for victims of violence. In **Sri Lanka**, UNICEF's continued support to the Attorney General's Office to improve judicial processes benefited over 3,900 survivors of child abuse.

UNICEF works to embed child-friendly and gender-sensitive justice processes and procedures into service delivery and to strengthen sectoral coordination to scale up the quality-of-service delivery more effectively. UNICEF in **Ghana** helped establish eight additional child-friendly GBV courts equipped with specific materials to ensure a safe and child-sensitive testimony process, and three women and child interviewing rooms in areas with high caseloads of sexual violence cases. In **Viet Nam**, 180 investigators and 177 legal aid and justice officers received skills training to handle cases involving children and women survivors of violence more effectively, especially GBV.

Increasing investment in the **legal empowerment of children** and their **access to legal aid** is a principal component of children's access to justice. There has been a significant increase since 2017 in the number of countries that enable children's access to justice and legal aid, both by law and in practice. This has risen from 65 countries reporting in 2017 to 103 countries in 2021. In **Belarus**, UNICEF and partners introduced a free legal aid mobile app, *Advokat*, which enables adolescents to obtain free online legal consultations and related information. In **Georgia**, a Legal Aid Service website for children was developed, including for children with disabilities, which aims to increase awareness on how to access legal aid.

UNICEF is also supporting empowerment-based approaches to end child marriage. In 2021, the UNFPA-UNICEF Global Programme to End Child Marriage promoted the rights of over 7.6

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<sup>27</sup> United Nations Children's Fund (2022) *Global Annual Results Report 2021: Every child is protected from violence and exploitation* <<https://www.unicef.org/reports/global-annual-results-2021-goal-area-3>>.

million adolescent girls to avert marriage and pregnancy and enabled them to achieve their aspirations through school education, life skills and comprehensive sexuality education, vocational and technical training, and other alternative pathways. The Global Programme has embraced a gender transformative approach which supports programming to address especially the critical role of key players within the wider socio-ecology including boys, men and gatekeepers, systems and policymakers in transforming unequal gender norms.<sup>28</sup>

### **What more is needed**

While extensive resources are invested in access to justice generally, only a limited portion of these resources are devoted towards extending the benefits of these reforms to children. Governments and international community 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.

In 2021, UNICEF launched an ambitious 10-year Reimagine Justice for Children Agenda<sup>29</sup> ('Reimagine Agenda') at the World Congress on Justice with Children. The Reimagine Agenda builds on the lessons learned from the COVID-19 pandemic<sup>30</sup> and the recommendations of the UN Global Study on Children Deprived of their Liberty.<sup>31</sup> The Reimagine Justice for Children Agenda constitutes six key priority actions for child protection programming which should accelerate progress over the next decade. 'Every child survivor of sexual violence, abuse or exploitation receives justice' is one of the six key policy asks. Central to the Reimagine Justice for Children Agenda is children's legal empowerment.

While children possess the fundamental right to be heard and taken seriously, children face particular vulnerabilities and barriers in accessing justice as elaborated in this submission. To promote the legal empowerment of children, the Reimagine Agenda calls for investments in legal rights awareness for children in justice and welfare systems; the recognition of a child's

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<sup>28</sup> See further UNFPA-UNICEF Global Programme to End Child Marriage Gender-Transformative Accelerator Tool <<https://www.unicef.org/documents/gender-transformative-accelerator-tool>>.

<sup>29</sup> United Nations Children's Fund (2021) Reimagine Justice for Children <<https://www.unicef.org/documents/reimagine-justice-children>>.

<sup>30</sup> United Nations Children's Fund (2020) Access to Justice for Children in the era of COVID-19: Learnings from the Field <<https://www.unicef.org/media/92261/file/Access-to-Justice-COVID-19-Learning-Brief-2021.pdf>>.

<sup>31</sup> Nowak, Manfred, *The United Nations Global Study on Children Deprived of Liberty*, United Nations, New York, 2020.

legal standing and the right to be heard in relevant judicial and administrative proceedings; access to free legal aid, representation and services; integration of social work and child specialization within the justice sector; and support for strategic litigation on justice for children.