**UNICEF input**

**Justice, accountability and redress - Report of the International Independent Expert Mechanism to Advance Racial Justice and Equality in Law Enforcement**

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UNICEF welcomes the opportunity to provide input into the IIEM’s forthcoming report. UNICEF takes this opportunity to highlight the particular barriers faced by children (i.e. persons under 18) belonging to ethnic minorities in Albania, Georgia, Kyrgyzstan, and Montenegro.

The content of this submission is pulled from UNICEF report [Children’s Equitable Access to Justice: Central and Eastern Europe and Central Asia](https://www.idlo.int/sites/default/files/pdfs/publications/UNICEF-IDLO%20-%20Children%E2%80%99s%20Equitable%20Access%20to%20Justice.pdf). The findings of the report are based, *inter alia*, on interviews with 120 justice sector professionals**,** 175 children and 32 family members. Though the report does not specifically focus on justice for excessive use of force by law enforcement officials, it highlights the intersecting forms of marginalisation faced by children belonging to ethnic minorities in seeking justice, due to their age and ethnicity. Thus, its contents are relevant to all children belonging to minorities who seek justice for human rights violations committed against them, including by law enforcement officials.

# Barriers to access to justice for children belonging to minorities

## Linguistic constraints

Linguistic constraints were 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.

Similarly, progress reports for **Montenegro** have noted problems with the implementation of the law on legal aid[[1]](#footnote-2) as well as linguistic barriers to access for certain ethnic groups.[[2]](#footnote-3) Finally, it is worth noting that children are rarely, if ever, mentioned as stakeholders in access to justice-related issues in country progress reports.

The UN Economic and Social Council’s 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.”[[3]](#footnote-4) The Guidelines also indicate: “Professionals should be trained and educated about such differences.”[[4]](#footnote-5) Justice systems should 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.[[5]](#footnote-6)

Responses by justice sector professionals indicate that there is an emphasis on providing interpretation/ translation. 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, “Translation is provided in case a person does not understand the Albanian language.” 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.” Justice sector professionals highlighted, however, that challenges exist in implementation.

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. 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.” A representative of Kyrgyzstan’s Centre of Prevention of Child Delinquency conveyed: “Children are provided with a translator.”

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.”

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.

## Distrust

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. 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.

Children in all four countries expressed a 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.” In **Kyrgyzstan**, **s**everal boys recounted specific instances of discriminatory treatment by the police.

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.

## Birth registration

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**, 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,[[6]](#footnote-7) 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.[[7]](#footnote-8) 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.[[8]](#footnote-9)

## Discrimination

In **Albania**, justice sector professionals highlighted a lack of clarity on what the best interests of the child principle[[9]](#footnote-10) 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.”

# Barriers to children’s access to justice

Children seeking justice also face other obstacles due to their age, regardless of their background. These obstacles intersect with the previously listed barriers faced by children belonging to ethnic minorities.

## Access to information

Children are not necessarily aware of the range of redress mechanisms available to them. 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 (e.g. child protection agencies, child helplines, and mediation and reconciliation). 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. Justice sector professionals also suggested that better information about available resources and remedies must be disseminated in more practical, relevant forums for children and their families, and suggestions were put forward.

Moreover, children may not be aware of their rights. Across the four countries, the justice sector professionals interviewed felt that children in vulnerable situations had less awareness of their rights than other children. 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. 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.”

## Legal and practical obstacles

Children typically lack 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. In all four countries the legal 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.[[10]](#footnote-11) Moreover, even when children are legally entitled to do so, they encounter serious difficulties in filing complaints.

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.

## Lack of child-friendly justice

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 UN 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.[[11]](#footnote-12)

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.[[12]](#footnote-13)

# Measures to strengthen children’s equitable access to justice

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 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. European Commission, ‘Montenegro Progress Report’, October 2014, p. 39. [↑](#footnote-ref-2)
2. European Commission, ‘Montenegro 2013 Progress Report’, 16 October 2013, p. 37–38. [↑](#footnote-ref-3)
3. 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. 16. [↑](#footnote-ref-4)
4. Ibid. [↑](#footnote-ref-5)
5. See: University of Minnesota Human Rights Center, ‘Human Rights. Yes!, Action and Advocacy on the Rights of Persons with Disabilities, 2nd Edition’, Curriculum, University of Minnesota Human Rights Center, 2012, p. 141. [↑](#footnote-ref-6)
6. Protector of Human Rights and Liberties, ‘Annual Report for 2013’, Podgorica, March 2014, p. 109. [↑](#footnote-ref-7)
7. European Commission against Racism and Intolerance, ‘ECRI Report on Montenegro (fourth monitoring cycle)’, ECRI, 21 February 2012. [↑](#footnote-ref-8)
8. 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. [↑](#footnote-ref-9)
9. 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 its General Comment No. 14. The Committee on the Rights of the Child explained that ‘best interests’ has three aspects: it is a substantive right, a legal interpretative principle and a rule of procedure. [↑](#footnote-ref-10)
10. 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. [↑](#footnote-ref-11)
11. Cunningham, Alison and Lynda Stevens, ‘Helping a child be a witness in court: 101 things to know, say and do’, Centre for Children and Families in the Justice System, London, Ontario, 2011. [↑](#footnote-ref-12)
12. For example, see: Family Law (Albania), 2003, art. 2; Law on the Treatment of Juveniles in Criminal Proceedings (Montenegro), 2012, art. 1. [↑](#footnote-ref-13)