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# **Access to Justice for Children with Mental Disabilities:**

## **Project Summary Report**



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2015



ISBN 978-615-80236-6-5

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This publication has been produced with the financial support of the Fundamental Rights and Citizenship Programme of the European Union. The contents of this publication are the sole responsibility of the Mental Disability Advocacy Center and can in no way be taken to reflect the views of the European Commission.

April 2015

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# 1. Introduction and Overview

This summary report provides an overview of a two-year project on access to justice for children with mental disabilities in ten Member States of the European Union (EU). The project was designed to address an important gap in research and evidence to inform policy at the national and European levels, directly

drawing from international human rights standards. The research project was multidisciplinary and took place in Bulgaria, Czech Republic, Ireland, Hungary, Latvia, Lithuania, Slovenia, Spain, Romania and the United Kingdom.

## Definitions

“Access to justice” is an evolving concept in international law and refers to the right of “effective access to systems, procedures, information and locations used in the administration of justice.”<sup>1</sup> Flowing from Article 8 of the Universal Declaration on Human Rights (UDHR), it encompasses the right to an effective remedy for violations of fundamental rights.

“Children with mental disabilities” has been used throughout this project to refer to children with intellectual, developmental, cognitive and/or psycho-social disabilities. Children with intellectual disabilities generally have greater difficulty than other children with their intellectual and adaptive functioning and development due to a long-term condition that arises at birth or during childhood. Developmental disability includes intellectual disability, as well as children with other developmental challenges including cerebral palsy, autism spectrum disorder and fetal alcohol spectrum disorder. Cognitive disability refers to difficulties with learning and processing information. Children with psycho-social disabilities are those who experience mental health issues.

## Project overview

The central **aim** of the project was to provide an evidence and information base to strengthen the right for children with mental disabilities to access remedies and redress for violations of their fundamental human rights through judicial and semi-judicial processes at the national level. The project had **four core objectives**:

1. Development of a methodology for gathering data on access to justice for children with mental disabilities across the EU;
2. Development of standards for access to justice for children with mental disabilities flowing from international law, including in relation to protection of the privacy of children in

- legal processes, child participation, accessible information, access to legal assistance and representation, and the provision of reasonable accommodations;
3. Development of training and educational materials for practitioners concerned with the administration of justice and who come into contact with children with mental disabilities, namely judges, police officers, social workers, psychologists, etc.; and
4. Advocacy and dissemination activities to share the outcomes of this project with relevant policy-makers in Member States.

<sup>1</sup> Janet E. Lord et al., *Human Rights Yes! Action and Advocacy on the Rights of Persons with Disabilities*, 2<sup>nd</sup> edition, (Minneapolis: University of Minnesota Human Rights Center, 2012).

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## Tools for policy-makers and researchers

The project was co-financed by the European Union and has enabled project partners to produce a comprehensive set of research tools, findings and recommendations. This report provides a summary of the project outputs, the majority of which have been translated into all project languages and are available on the project website: [www.mdac.org/accessing-justice-children](http://www.mdac.org/accessing-justice-children).

- Professor Anna Lawson, *Access to Justice for Children with Mental Disabilities. The Collection and Dissemination of Data: Guidance Report* (MDAC and University of Leeds, January 2015) – available in all project languages.
- Professor Anna Lawson, *Access to Justice for Children with Mental Disabilities. Data Collection and Dissemination:*

*Synthesis of Findings* (MDAC and University of Leeds, April 2015) – available in English only.

- *Access to Justice for Children with Mental Disabilities: International Standards and Findings from Ten EU Member States* (MDAC, April 2015) – available in all project languages.
- A set of online education and training materials for judges, lawyers, police, social workers and other professionals involved in the administration of justice – available in all project languages.
- Factsheets on key barriers to accessing justice for children with mental disabilities in each of the project countries – available in English and each respective project language.

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## The European Dimension

The rights of children in justice systems have gained increasing importance at the European level in recent years. One of the most significant developments was the development of guidance by the Council of Europe on child-friendly justice which provides practical information to policy makers and others involved in the administration of justice in protecting children's rights in legal proceedings,<sup>2</sup> and makes specific reference to binding international human rights law. Many of the principles and standards apply directly to children with mental disabilities, but there is clearly a need for more targeted information about the provision of accommodations, adjustments and supports that may be required for children with intellectual or psycho-social impairments. To date there have only been limited attempts to address the rights of these children, and low awareness of the specific barriers they are likely to face to participation in justice processes.

Unlike the Council of Europe, the European Union (EU) 'confirmed' the United Nations Convention on the Rights of Persons with Disabilities (UN CRPD) in its own right in 2010, thereby undertaking specific obligations under international law to promote the rights of persons with disabilities, including children.<sup>3</sup> Shortly after this, the European Commission adopted an EU Agenda for the Rights of the Child.<sup>4</sup> Under the heading 'child-friendly justice', the Agenda noted the crucial role of the EU in facilitating action to improve outcomes for all children who come into contact with national justice systems:

"Making the justice system more child-friendly in Europe is a key action item under the EU Agenda for the Rights of the Child. It is an area of high practical relevance where the EU has, under the Treaties, competences to turn the rights of the child into reality by means of EU legislation."<sup>5</sup>

A number of related developments have also taken place, including the adoption of The Stockholm Programme to strengthen freedom, security and justice across the Union.<sup>6</sup> Although this places a focus on strengthening the rights of the child, it was noticeable that there was no specific mention of the rights of children with disabilities.

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2 "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 1098<sup>th</sup> meeting of the Ministers' Deputies, available online at [www.coe.int/childjustice](http://www.coe.int/childjustice) (last accessed: 20 April 2015).

3 Council Decision of 26 November 2009 concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities, OJ L 23, 27/1/2010, p. 35-61.

4 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *An EU Agenda for the Rights of the Child*, COM/2011/0060 final.

5 *Ibid.*, section 2.1.

6 European Council, *The Stockholm Programme - An Open and Secure Europe Serving and Protecting Citizens*, 4/5/2010, C 115/1.

Despite this omission, a number of other initiatives have been undertaken with a view to improving respect for the rights of children in justice processes, particularly in the field of criminal justice. In respect of suspects viewed to be 'vulnerable', a 2013 Recommendation of the European Commission called on Member States to prevent discrimination against persons with disabilities in the exercise of their procedural rights, to include a "presumption of vulnerability" for people with "persons with serious psychological, intellectual, physical or sensory impairments, or mental illness or cognitive disorders", along with guaranteeing rights to access information, legal assistance, and where a person was at risk of being deprived of their liberty.<sup>7</sup>

Other relevant measures taken include the adoption of the Victims Directive, which states that:

"Particular account should be taken of difficulties in understanding or communicating which may be due to a disability of some kind, such as hearing or speech impediments. Equally, limitations on a victim's ability to communicate information should be taken into account during criminal proceedings."<sup>8</sup>

In 2013, a further Directive was passed on the right of access to a lawyer in criminal proceedings.<sup>9</sup> The Directive makes reference to the Council of Europe's Guidelines on Child-Friendly Justice, but only makes a single reference to persons with disabilities.

In terms of research, it is to be welcomed that increased efforts have been undertaken to improve the quality and availability of information and data relating to the rights of the child, including a soon-to-be published study on violence against children with disabilities led by the EU Agency for Fundamental Rights,<sup>10</sup> and a major study to collect data on children in all judicial proceedings in the EU's 28 Member States.<sup>11</sup> The first stage of the latter project has resulted, for the first time, in the collection of extensive information in relation to children in criminal justice based on a list of 290 indicators. The focus on collection and dissemination of data is also to be welcomed, although it is notable that the study has not yet collected disaggregated data in relation to the experiences of children with various impairments.

It is hoped that the outcomes of the present project will provide further information for policy makers at the European Union and the Council of Europe to build a more thorough understanding of the multiple and systemic barriers to accessing justice faced by children with mental disabilities in Europe. In turn, we hope it promotes sustained, European-level action to undertake further targeted research which shines a light on their experiences, and contributes to the push for governments to implement their obligations under international law. Ultimately, it is our desire to see significantly improved outcomes for children in all spheres of justice, civil, criminal and administrative.



7 Commission Recommendation of 27 November 2013 on the procedural safeguards for vulnerable persons suspected or accused in criminal proceedings, OJ C 378, 12/2/2013, p. 8-10. It has been noted, however, that the concept of 'vulnerability' in setting out rights for persons with disability doesn't sit well with a human rights-based approach under the CRPD.

8 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, OJ L 315, 14/11/2012, p. 57-73, at para. 21.

9 Directive 2013/48/EU of the European Parliament and of the Council of 22 October 2013 on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with a third person and with consular authorities while deprived of liberty, OJ L 294, 6/11/2013, p. 1-12.

10 Further information available online at <http://fra.europa.eu/en/video/2014/violence-against-children-disabilities> (last accessed: 20 April 2015).

11 See the dedicated website at <http://www.childreninjudicialproceedings.eu/Home/Default.aspx> (last accessed: 20 April 2015).

## 2. Human rights indicators and data collection

Effective systems for monitoring the extent to which change is occurring play a crucial role in the implementation of human rights commitments made by governments. The EU Agenda on the Rights of the Child identified the lack of reliable data on the situation of children in Member States as a key barrier to the development of evidence-based policy.<sup>12</sup> The situation is more critical for children with mental disabilities on which there is very little information available, particularly regarding their rights to access remedies and redress for violations of their fundamental rights.

Responding to this concern, we sought to address four related themes during the project:

1. Synthesising relevant international standards relating to the collection of data for the purpose of monitoring the access to justice rights of children with mental disabilities;
2. Applying the international standards to analyse current guidance to policy-makers to facilitate effective monitoring, in particular assessing the extent to which current European indicator systems reflected include the experiences of these groups of children;
3. The requirement to develop information systems able to collect relevant, disaggregated data at the national level which sufficiently capture the experiences of children with mental disabilities in civil, criminal and administrative proceedings; and
4. Facilitating and undertaking further targeted research in this area by providing detailed guidance on such endeavours.

A summary of the findings of this part of the project are set out in a full report which is available in all project languages on the project website: [www.mdac.org/accessing-justice-children](http://www.mdac.org/accessing-justice-children).<sup>13</sup>

### Standards for Collecting and Disseminating Data

Article 31 of the CRPD, which has been ratified by all project countries (bar Ireland), and has been confirmed by the EU, requires that States must “collect appropriate information, including statistical research and data, to enable them to formulate and implement policies” which give effect to the rights of persons with disabilities. In the field of children’s rights, the UN Committee on the Rights of the Child (CRC) has also called on States to “systematically collect disaggregated data relevant to the information on the practice of the administration of juvenile justice, and necessary for the development, implementation and evaluation of policies and programmes”.<sup>14</sup>

As part of broader obligations on governments to collect data on the implementation of the rights of the child under periodic reporting procedures to the UN treaty bodies, the UN General Assembly has called on States to “incorporate detailed and

accurate information relating to access to justice for children, including on progress made and challenges encountered and statistical and comparable data”.<sup>15</sup>

The Council of Europe (CoE) has also placed some attention on the need to collect relevant data, particularly under the Guidelines on Child-Friendly Justice.<sup>16</sup> In recognition of the barriers faced by persons with disabilities, the CoE has sought to “encourage and advance comprehensive, diversified and specialised research on all disability issues”.<sup>17</sup>

#### Human rights indicator systems

Our research identified a number of relevant projects which had developed indicators relevant to the access to justice rights of children with mental disabilities in Europe, including:

<sup>12</sup> European Commission, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: An EU Agenda for the Rights of the Child, 15 February 2011, COM(2011)60 final.

<sup>13</sup> Professor Anna Lawson, *Access to Justice for Children with Mental Disabilities. The Collection and Dissemination of Data: Guidance Report* (MDAC and University of Leeds, January 2015).

<sup>14</sup> Committee on the Rights of the Child, General Comment No. 10: Children’s rights in juvenile justice, 25 April 2007, CRC/C/GC/10, para. 98.

<sup>15</sup> United Nations, General Assembly, Human Rights Council, Resolution No. 25/6: Rights of the child: access to justice for children, 25 March 2014, UN Doc. HRC/25/L.10.

<sup>16</sup> *Supra* note 2.

<sup>17</sup> Recommendation Rec(2006)5 of the Committee of Ministers to Member States on the Council of Europe Action Plan to promote the rights and full participation of people with disabilities in society: improving the quality of life of people with disabilities in Europe 2006-2015, available online at [http://www.coe.int/t/e/social\\_cohesion/soc-sp/Rec\\_2006\\_5%20Disability%20Action%20Plan.pdf](http://www.coe.int/t/e/social_cohesion/soc-sp/Rec_2006_5%20Disability%20Action%20Plan.pdf) (last accessed: 20 April 2015), Part 3.14.1.



1. The Disability Online Tool of the Commission (DOTCOM),<sup>18</sup> providing information on laws and policies relating to persons with disabilities, and a tool to inform the European Disability Strategy 2010-2020;
2. The EU Agency for Fundamental Rights' (FRA) indicators for the protection, respect and promotion of the rights of the child in the European Union,<sup>19</sup> which covers four core areas of rights including family environment and alternative care; protection from exploitation and violence; adequate standard of living; and education, citizenship and participation in school and sports;
3. A European Commission funded study to collect data on children's involvement in criminal, civil and administrative judicial proceedings;<sup>20</sup>
4. An indicator framework on juvenile justice developed by UNICEF and the UN Office on Drugs and Crime;<sup>21</sup> and
5. The Council of Europe's Assessment Tool on Child Participation.<sup>22</sup>

The indicator systems had a number of limitations which rendered the particular experiences of children with mental disabilities in justice systems invisible, or provided only partial information in specific domains. For example, the DOTCOM tool did not specifically address access to justice as a theme, and while the FRA indicators placed a welcome emphasis on the need for disaggregated data, particularly regarding disability in the field of justice, the system was not comprehensive in a way that would capture barriers to justice faced by children with mental disabilities. The EC study on children's involvement in legal proceedings brought together vast amounts of data from all EU Member States but unfortunately contained little disaggregation on the basis of disability.



## Information systems for collection of disaggregated data

"In order to fulfil their obligations, it is necessary for States parties to set up and develop mechanisms for collecting data which are accurate, standardized and allow disaggregation, and which reflection the actual situation of children with disabilities. The importance of this issue is often overlooked and not viewed as a priority despite the fact that it has an impact not only on the measures that need to be taken in terms of prevention but also on the distribution of very valuable resources needed to fund programmes."<sup>23</sup>

The study went on to assess the design of information systems in order to harness data on the individual experiences of children with mental disabilities in justice systems. It looked at two related issues. The first is the way in which details of a child's disability or impairment-type could be collected by justice systems, and the second was the recording of support or adjustments made to judicial proceedings. These two types of information are viewed as crucial to inform the analysis and reform of justice processes to fully accommodate and ensure access to justice for children with mental disabilities.

There are a number of challenges in developing such information systems. Reliance on overly broad categories of disability is unlikely to provide information on the specific barriers faced by, for example, children with multiple disabilities. In the alternative, collection of fine-grain detail on a wide range of impairment types is likely to become unworkable or rely overly on medicalised notions of disability, rather than adopting the social model of disability recognised by the UN Convention on the Rights of Persons with Disabilities (CRPD). A further complexity arises relating to stigma connected with labelling children as having particularly forms of impairments, such as in relation to children who experience mental health issues.

Such systems must always be guided by the best interests of the child, set out in Article 3(1) of the UN Convention on the Rights of the Child (CRC) and Article 7 of the CRPD. Guidance from the UN Committee on the Rights of Persons with Disabilities (CRPD Committee) suggests that "physical, sensory, intellectual and mental" impairment-types could be broad categories of disaggregation, yet definitional challenges relate to these categories and require further consideration.

18 Available online at <http://www.disability-europe.net/dotcom> (last accessed: 20 April 2015).

19 Available online at <http://fra.europa.eu/en/publication/2012/developing-indicators-protection-respect-and-promotion-rights-child-european-union> (last accessed 20 April 2015).

20 Available online at <http://www.childreninjudicialproceedings.eu/Home/Default.aspx> (last accessed: 20 April 2015).

21 Available online at [http://www.unodc.org/pdf/criminal\\_justice/Manual\\_for\\_the\\_Measurement\\_of\\_Juvenile\\_Justice\\_Indicators.pdf](http://www.unodc.org/pdf/criminal_justice/Manual_for_the_Measurement_of_Juvenile_Justice_Indicators.pdf) (last accessed: 20 April 2015).

22 Council of Europe Children's Rights Division and Youth Department, *Child Participation Assessment Tool: Indicators for Measuring Progress in Promoting the Rights of Children and Young People Under the Age of 18 to Participate in Matters of Concern to them*, available online at [http://coe.int/t/dg3/children/participation/Newdefault\\_en.asp](http://coe.int/t/dg3/children/participation/Newdefault_en.asp) (last accessed: 20 April 2015).

23 Committee on the Rights of the Child, General Comment No. 9 (2006): The rights of children with disabilities, 27 February 2007, CRC/C/GC/9, para. 19.

Human rights standards concerning recordkeeping within justice systems exist, particularly under the UN Havana Rules regarding children in detention.<sup>24</sup> Whilst comprehensive information is required to be collected regarding the identity, reasons for detention, notification of parents and details of physical or mental health issues, it is notable that supports and reasonable accommodations are absent, and are therefore less likely to be monitored by governments.

Research from this project found no examples of initiatives to develop comprehensive systems for collecting and sharing information about supports and reasonable accommodations for children with mental disabilities between justice professionals. One promising development identified was a draft “Accessible Information Standard” from the National Health Service in England, which specifies that needs and adjustments for individual service users should be recorded.<sup>25</sup>

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## Recommendations

A full set of recommendations can be found in the report, and include:

- Placing a greater emphasis on the collection of data in respect of access to justice for persons with disabilities;
  - Introduction of systems for the collection and publication of disaggregated data on the basis of age and impairment-type at all stages of the justice system;
  - Collection of systematic data on the nature of adjustments and supports required by individual children, in accordance with the best interests of the child;
  - Mainstreaming these approaches at the level of the European Commission;
  - Guidance drawn up by the European Commission and national governments articulating the requirement that assessments of children with mental disabilities should be focused on the provision of disability-related adjustments which enable their participation in judicial proceedings on an equal basis with others.
- Creation of tools and systems to share only relevant information related to disability-based adjustments and supports needed by children in judicial proceedings with key professionals who interact with them and on a multi-disciplinary basis; and
  - Undertaking further research and developing outcome indicators to assess the access to justice rights of children with mental disabilities in national justice systems.



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24 United Nations, General Assembly, Resolution No. 45/113: United National Rules for the Protection of Juveniles Deprived of their Liberty, 14 December 1990, A/RES/45/113.

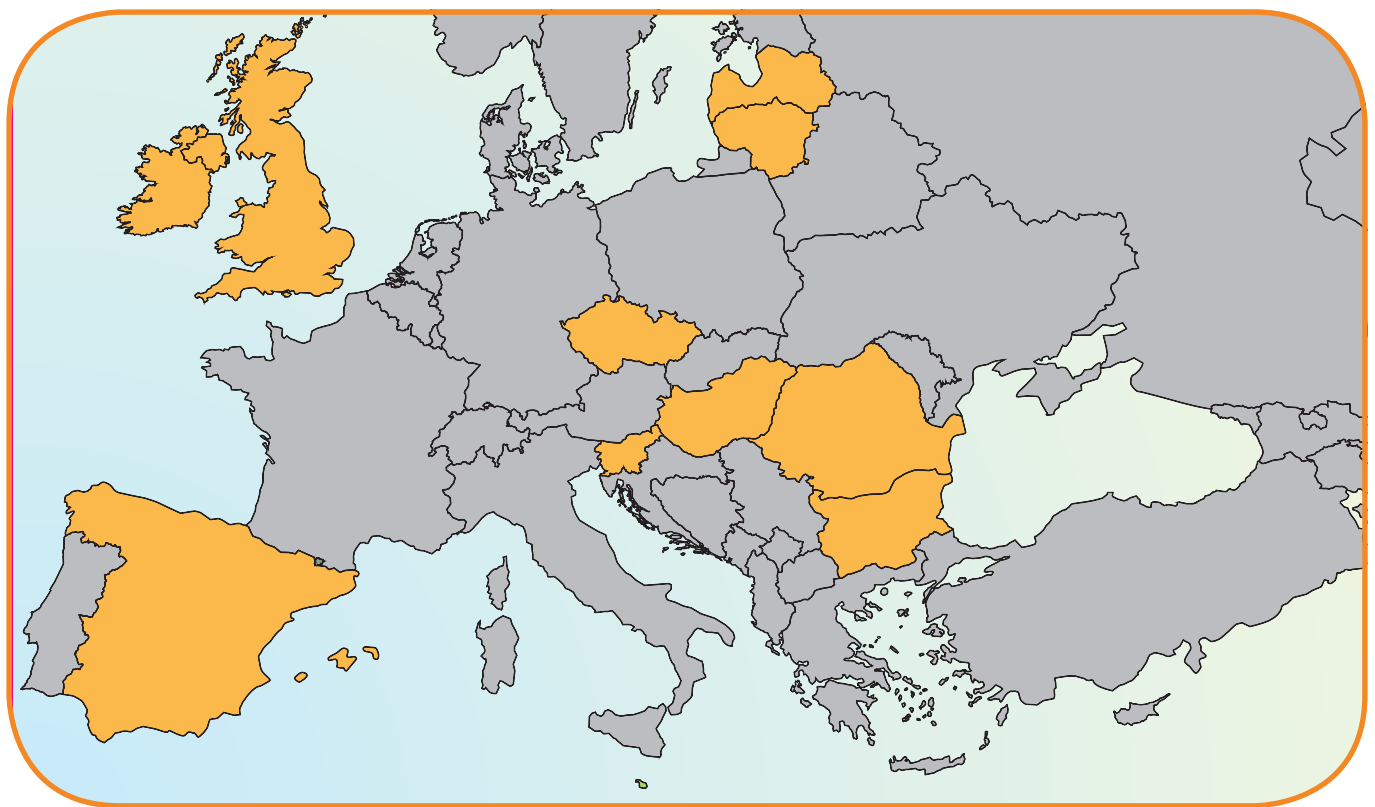
25 For further information, see <http://www.england.nhs.uk/accessibleinfo> (last accessed: 20 April 2015).

# 3. Standards and findings in ten European countries

A driving factor in the development of this project was the recognition that children with mental disabilities in Europe are at higher risk of experiencing serious human rights violations on the basis of their disability. The research took place in ten Member States of the European Union, and was led by academics in the fields of law, human rights and social work, alongside activists and researchers at national NGOs. The project was supported by an international panel of experts from the fields of children’s rights and disability rights.<sup>26</sup>

The project was designed to collect information in three spheres of law, namely criminal, civil and administrative processes. Each of these legal domains is potentially very wide, and so the scope was focused on some of the critical issues, junctures and potential points of contact between children with mental disabilities and justice systems:

- 1. Criminal justice**  
Experiences of child witnesses, victims and alleged offenders with mental disabilities at all stages of criminal investigations and prosecutions.
- 2. Civil justice**  
Decisions relating to where and with whom children with mental disabilities live, including determinations related to institutionalisation and access to supports to enable the right to live in the community.
- 3. Administrative justice**  
Decisions relating to access to education, and the provision of supports, adjustments and reasonable accommodations in inclusive educational settings.



Project countries

26 A full list of contributors is available on the project website at [www.mdac.org/accessing-justice-children](http://www.mdac.org/accessing-justice-children).

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## Context

Children with disabilities are more likely to experience abuse and violence than children without disabilities,<sup>27</sup> including targeted hostility,<sup>28</sup> and research has suggested that very high numbers of children with intellectual or developmental disabilities are likely to have experienced sexual abuse.<sup>29</sup>

The UN Secretary General's World Report on Violence Against Children highlighted that long-term institutionalisation of children with disabilities remains a persistent problem throughout the world,<sup>30</sup> and particularly in central and eastern Europe where rates of institutionalisation were increasing at the turn of the century.<sup>31</sup> Human rights monitoring and documentation, mainly carried out by civil society organisations, has brought to attention widespread neglect and abuse of children in social care institutions, and weak monitoring and child protection mechanisms.<sup>32</sup>

The situation of children who come into contact with criminal justice systems has begun attracting greater attention, particularly following the adoption of the UN Standard Minimum Rules for the Administration of Juvenile Justice ('The Beijing Rules').<sup>33</sup> The international standards have stressed the need for child-centred procedures, diversion of child offenders, and highlighted the best interests principle as being paramount in all procedures. Unfortunately there has been little emphasis or research on the position of children with disabilities in criminal justice systems, and there is almost no information

available about children with mental disabilities.<sup>34</sup> The World Report highlighted some of the common problems and called for specific action by governments in the following terms:

"Although almost no data are available about young offenders with disabilities, it is widely accepted that children with intellectual impairments and mental health problems are at increased risk of conflict with the law – often at the behest of others who see them as pawns. Once in trouble, they are less likely to be able to talk their way out of trouble, or make a compelling case on their own behalf. Once in prison, they are more likely to be victimised. Neither the juvenile justice nor the child welfare system is well equipped to address the child's mental health needs [...]"<sup>35</sup>

A recent study by the Prison Reform Trust in the UK showed that 60% of alleged child offenders had 'communication difficulties', 25% of alleged child offenders had an intellectual impairment, and found that there was "no routine or systematic procedure for identifying the particular support needs of defendants."<sup>36</sup>

Child witnesses and victims of crime with mental disabilities are commonly excluded from giving valid testimonies in criminal procedures, both with reference to their age and due to their impairments.<sup>37</sup> In many cases, judicial attitudes and procedural barriers – such as general requirements to understand the nature and consequences of an oath – result in the evidence of such children being excluded, or prosecutions dropped.<sup>38</sup>

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27 Hilary Brown, *Safeguarding adults and children with disabilities against abuse* (Strasbourg: Council of Europe, 2003).

28 The EU Agency for Fundamental Rights is currently finalising a major study on targeted violence and hostility against children with disabilities; further details can be found online at <http://fra.europa.eu/en/project/2012/children-disabilities-targeted-violence-and-hostility> (last accessed: 20 April 2015).

29 D. Valenti-Hein and L. D. Schwarz, *Sexual Abuse of Those with Developmental Disabilities* (Santa Barbara, CA: James Stanfield Co, 1995).

30 UN Secretary General, *Summary Report: Violence against Disabled Children* (New York: Yale School of Public Health, 2005).

31 Paul Sergio Pinheiro, *World Report on Violence Against Children – Secretary General's Study on Violence Against Children* (Geneva: OHCHR, UNICEF, WHO, 2006), 183.

32 See, for example, Centre for Legal Resources and UNICEF, *Monitoring the rights of mentally disabled children and young people in public institutions* (Bucharest: UNICEF Romania, 2006).

33 United Nations, General Assembly, Resolution No. 40/33: United Nations Standard Minimum Rules on the Administration of Justice ('The Beijing Rules'), 29 November 1985, A/RES/40/33. See also: United Nations, Economic and Social Council, Resolution No. 1997/30: Guidelines of Action on Children in the Criminal Justice System, 21 July 1997, E/RES/1997/30.

34 *Supra* note 30.

35 *Ibid.*, 194-5.

36 Jenny Talbot, *Fair Access to Justice? Support for vulnerable defendants in the criminal courts. A PRT briefing paper* (UK: Prison Reform Trust, June 2012).

37 See, for example: Rebecca Milne and Ray Bull, "Interviewing witnesses with learning disabilities for legal purposes", *British Journal of Learning Disabilities* 29:3 (2012), 93-7.

38 Claire Edwards, Gillian Harold and Shane Kilcommins, *Access to Justice for People with Disabilities as Victims of Crime in Ireland* (University College Cork, School of Applied Social Studies and Centre for Criminal Justice and Human Rights, Faculty of Law, February 2012), 140.

## International standards

Children with mental disabilities are bearers of human rights on an equal basis with others. By virtue of both their age and their types of impairments, they are more likely to experience multiple forms of discrimination, and are situated at an important intersection between international law on the rights of the child and on the rights of persons with disabilities.

The research was guided by core international human rights standards on access to justice, and was supplemented with reference to the Council of Europe Guidelines on Child-Friendly Justice.<sup>39</sup> All countries in which the project took place have acceded to both the UN Convention on the Rights of the Child (UN CRC) and the UN Convention on the Rights of Persons with Disabilities (UN CRPD), with the exception of Ireland which has not yet ratified the CRPD.

### Access to Justice in International Law

#### **Universal Declaration of Human Rights**

##### *Article 8*

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.

#### **United Nations Convention on the Rights of the Child**

##### *Article 3*

1. 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 the primary consideration.
2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.
3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

##### *Article 12*

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. 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.

#### **United Nations Convention on the Rights of the Child**

##### *Article 7- Children with disabilities*

1. States Parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children.
2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration.
3. States Parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given due weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age-appropriate assistance to realize that right.

##### *Article 13 – Access to justice*

1. States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision of procedural and age-appropriate accommodations, in order to facilitate their effective role as direct and indirect participants, including as witnesses, in all legal proceedings, including at investigative and other preliminary stages.

In order to help to ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for those working in the field of administration of justice, including police and prison staff.

<sup>39</sup> *Supra*, note 2.

Other relevant international and European standards were also considered in the design and conduct of the research in project countries, including:

- General Comments of the UN Committee on the Rights of the Child,<sup>40</sup> and of the UN Committee on the Rights of Persons with Disabilities;<sup>41</sup>
- United Nations Standard Minimum Rules for the Administration of Juvenile Justice (“the Beijing Rules”), 29 November 1985, A/RES/40/33;
- United Nations Rules for the Protection of Juveniles Deprived of their Liberty (“the Havana Rules”), 14 December 1990, A/RES/45/113;
- United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, 20 December 2012, A/RES/67/187.

Project partners determined to place a particular emphasis on access to justice for children with mental disabilities in institutional settings. Their placement in such institutions renders them less able to access complaints mechanisms which may be available to other children, and therefore less likely to be able to achieve remedies for human rights violations through judicial or semi-judicial routes. The role of independent monitoring and inspection bodies was considered in terms of the extent to which they might be able to facilitate access to justice for such children, and specific regard was had to whether they could initiate and investigate complaints and proceedings on behalf of children with mental disabilities. The following standards in international law were relied upon:

- Article 16, CRPD on the right to freedom from exploitation, violence and abuse, and the requirement to set up “effective monitoring” of “all facilities and programmes designed to serve persons with disabilities”,<sup>42</sup>
- Article 33(2) of the CRPD on the establishment of an independent mechanism to monitor implementation of the Convention; and
- The Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), and particularly the obligation to establish national preventive mechanisms which can undertake regular and independent inspection of places where persons are deprived of their liberty.<sup>43</sup>

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## Domestic research

Project partners then designed a methodology to apply the relevant international standards within each of the countries in the project, keenly aware of the dearth of information currently available. The complex nature of the research required the assessment of national legislation and policy, collection of general statistics available regarding national justice systems. A serious lack in data also led partners to agree that empirical research was crucial in highlighting the systematic barriers faced by children with mental disabilities. Broadly, the research was conducted in three related phases.

### **Phase One: Desk-based research**

The purpose of this phase was to gain a broad understanding of the extent to which access to justice for children with mental disabilities had been addressed at the national level, to begin the identification of key barriers for children, and to inform the development of more targeted research in subsequent phases.

This phase involved the collection of publicly-available information related to the justice system by researchers. Sources of information included legal and academic books; journal articles; legislation; case reports from courts, tribunals and ombudsman authorities; parliamentary literature; statistical records; reports of national equality bodies, national human rights institutions or ombudsman offices; NGO and civil society reports; news articles; and information available in UN and other international reports.

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40 Particularly: Committee on the Rights of the Child, General Comment No. 2 (2001): The Role of Independent National Human Rights Institutions in the Protection and Promotion of the Rights of the Child, 15 November 2002, CRC/GC/2002/2; CRC Committee, General Comment No. 9 (2006): The rights of children with disabilities, 27 February 2007, CRC/C/GC/9; CRC Committee, General Comment No. 10 (2007): Children’s rights in juvenile justice, 25 April 2007, CRC/C/GC/10; and, CRC Committee, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC/C/GC/14.

41 Committee on the Rights of Persons with Disabilities, General Comment No. 1 (2014): Equal recognition before the law, CRPD/C/GC/1; and, CRPD Committee, General Comment No. 2 (2014): Accessibility, CRPD/C/GC/2.

42 Article 16(3), CRPD.

43 Part IV, OPCAT.

### **Phase Two: Facilitated desk-based research**

This purpose of this second phase of research was to identify additional sources of information about access to justice for children with mental disabilities at the national level by attempting to access information that was less available to the public. An additional purpose of this phase was to identify key barriers faced by researchers in the field, thereby resulting in constructing guidance to those who undertake justice-related research for children with disabilities in the future.

During this phase, researchers attempted to gain access to specialist libraries and research institutes for members of the judiciary, lawyers, social workers, prosecutors, probation authorities, and national data bank systems. Researchers were also provided with guidance on the analysis of large amounts of information, including through quantitative and qualitative analysis techniques.

### **Phase Three: Empirical research**

The purpose of this final phase of the research was to gain qualitative information to supplement the findings from the first two phases. The stage was particularly important in light of significant information gaps regarding barriers to accessing justice, the availability of supports and reasonable accommodations to children in the justice system, and to throw light on the perspectives and experiences of judges, lawyers, social workers and other professionals. In addition, the aim was also to collect direct testimony from children with mental disabilities themselves, and their parents and carers.

During this phase, researchers organised a range of focus groups with groups of professionals – including a number of multidisciplinary group sessions – and also conducted semi-structured one-to-one interviews with parents and some children. A number of real challenges surfaced during this phase, including extended periods of time required to gain relevant ethical approvals, difficulties in accessing members of the judiciary, and procedural and other hurdles in arranging to visit and meet children with mental disabilities who were resident in institutions.

A more detailed description of the research methodology can be found in the report entitled *Data Collection and Dissemination Synthesis of Findings* which is available in English on the project website at [www.mdac.org/accessing-justice-children](http://www.mdac.org/accessing-justice-children).<sup>44</sup>



## **Proposed indicators on access to justice for children with mental disabilities**

The research produced vast quantities of information across the ten project countries relating to children, persons with disabilities, the administration of justice, monitoring and complaints mechanisms, and related areas. One of the key challenges in the project was determining a way to analyse this information in a way that brought out the issues faced specifically by children with mental disabilities, and the identification of similarities, differences and themes across the countries. To respond to this, and also to draw out findings relevant at the European level, project partners developed a set of human rights indicators which served as an analytical framework.

This approach was based on analytical guidance that has been developed by the Office of the High Commissioner for Human Rights on monitoring the implementation of human rights standards,<sup>45</sup> as well as a degree of flexibility emanating from resource constraints.<sup>46</sup> The guidance proposes three types of indicators, known as the ‘Structure-Process-Outcome’ approach.<sup>47</sup> Due to the lack of outcome data – which was not collected by any of the countries in this present research – this project focused on setting out structure and process indicators. Project partners call on the EU and Member States to develop the infrastructure necessary to populate meaningful outcome indicators as a next stage.

44 Professor Anna Lawson, *Access to Justice for Children with Mental Disabilities. Data Collection and Dissemination: Synthesis of Findings* (MDAC and University of Leeds, April 2015).

45 United Nations Office of the High Commissioner for Human Rights, *Human Rights Indicators: A Guide to Measurement and Implementation*, HR/PUB/12/5, (New York and Geneva: OHCHR, 2012).

46 According to the OHCHR, “a human rights indicator is defined as specific information on the state or condition of an object, event, activity or outcome that can be related to human rights norms or standards; that addresses and reflects human rights principles and concerns; and that can be used to assess and monitor the promotion and implementation of human rights.” Ibid.

47 More detailed information about this approach is available in: Professor Anna Lawson, *Access to justice for children with mental disabilities. The Collection and Dissemination of Data: Guidance Report* (MDAC and University of Leeds, January 2015), available on the project website at [www.mdac.org/accessing-justice-children](http://www.mdac.org/accessing-justice-children) (last accessed: 20 April 2015).

# Indicators on access to justice for children with mental disabilities'

## Cluster One: Monitoring and Complaints – structural indicators

- I.1: The Government has ratified and domesticated international human rights law on the rights of the child and on the rights of persons with disabilities
- I.2: The Government has adopted national policies which include an objective to increase access to justice for children with mental disabilities
- I.3: An independent national body is established in law to monitor, protect and promote the rights of children with mental disabilities, including in monitoring institutional settings
- I.4: Effective complaints procedures exist in all facilities which serve children with mental disabilities

## Cluster Two: Participation in Justice Processes – process indicators

- II.1: The best interests of the child is a paramount consideration in all processes and procedures involving children with mental disabilities
- II.2: Justice systems are accessible to children with mental disabilities

- II.3: Justice systems assess the individual needs of each child with a mental disability and ensure that individualised accommodations and supports are made to enable their safe and effective participation
- II.4: The personal and sensitive data of children with mental disabilities are protected, and they are protected from stigmatisation by the media

## Cluster Three: Facilitating Access to Justice – process indicators

- III.1: Independent bodies and third persons can bring complaints on behalf of a child or children with mental disabilities
- III.2: Legal representation and legal aid is available for children with mental disabilities throughout all justice processes that affect them
- III.3: All professionals in the justice process that come into contact with children with mental disabilities must be trained to recognise and facilitate their rights, including their rights to reasonable accommodations

The detailed findings from this analysis have been set out in the report entitled *International Standards and Findings From Ten EU Member States*, which is available in all project languages on the project website: [www.mdac.org/accessing-justice-children](http://www.mdac.org/accessing-justice-children).





# Training of professionals in the justice system

The need for training of professionals in the justice system was highlighted at an early stage by project partners, and has been repeatedly set out in a number of relevant international human rights instruments. Article 4(1)(i) of the UN Convention on the Rights of Persons with Disabilities (CRPD) calls on States Parties to the Convention to “promote the training of professionals and staff working with persons with disabilities in the rights recognized in this Convention so as to better provide the assistance and services guaranteed by those rights.” A similar requirement has also been noted by the UN Committee on the Rights of the Child (CRC Committee) in General Comment No. 14.<sup>48</sup>

Some of the most significant barriers identified to children accessing justice were the attitudes of members of the judiciary, lawyers, and other professionals including police, social workers and directors of social care institutions.<sup>49</sup> In many countries it was noted that discriminatory attitudes prevailed, reflecting negative assumptions about children with disabilities and their ability to participate in legal processes. The CRPD represents a fundamental shift in understanding of the nature of disability, away from a medical approach focused on the individual impairments of a person and towards a recognition that disability is a result of the interaction between persons with impairments and environmental or attitudinal barriers in society.<sup>50</sup> It follows that negative and exclusionary attitudes on the part of professionals in justice systems require identification and dismantling.

At present there is little information available for professionals regarding the rights of children with disabilities, and even less related to accessing justice. No general or specialist courses were identified which provided specific training to judges and lawyers in the field.<sup>51</sup>

To respond to these factors, the Centre for Disability Studies at the University of Leeds collaborated with the Centre for Disability Law and Policy at the National University of Ireland, Galway, to develop a comprehensive set of education and training materials for professionals. It is hoped that national judicial training academies and other professional associations will actively use the guide to strengthen the knowledge and skill-sets of their members. The specific aims of the materials are to facilitate and support:

- the transdisciplinary training of key professionals working in the justice system who may come into contact with children with mental disabilities;
- the education of students on university and other academic courses in subjects such as law, human rights, disability studies and children’s studies which have relevance to the situation of children with mental disabilities in judicial proceedings; and
- to provide a set of resources which will help to enhance the understanding and human-rights-awareness of other people with an active interest in the subject (e.g. parents of children with mental disabilities).



48 Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), 29 May 2013, CRC/C/GC/14, para. 15.

49 For more information, see *Access to Justice for Children with Mental Disabilities. International Standards and Findings from Ten EU Member States* (MDAC, April 2015), available on the project website in all project languages: [www.mdac.org/accessing-justice-children](http://www.mdac.org/accessing-justice-children) (last accessed: 20 April 2015).

50 CRPD, Preamble para. (e), and Article 9.

51 *Supra* note 49.

# Core concepts and skills

The materials begin with a description of core concepts relating to the rule of law and access to justice. Each theme is presented in an accessible manner and provides concrete information on human rights standards in a non-legalistic manner. They include:

1. Accessibility
2. Access to Justice
3. Disability and Childhood
4. Equality and Non-discrimination
5. Ability to Complain
6. Participation in Proceedings
7. Representation and Assistance
8. Effective and Appropriate Data Protection
9. Fair Trial

Knowledge, however, is not necessarily sufficient to prompt change among all professionals, and so a further section covers skills which are viewed as essential in ensuring a child-centred and disability-sensitive approach. Briefly, the specific areas covered are:

## **Developing positive, non-prejudicial attitudes**

This involves the development of a positive and supportive approach in all interactions with children, regardless of professional status. It also encourages professionals to consider how to support such children appropriately within a safe environment.

## **Identifying and removing barriers**

This calls on professionals, including judges, to look closely at legal and other procedures to determine the extent to which they may be discriminatory or automatically exclude children from gaining remedies, and then taking action to dismantle

them. The approach requires a focus on the best interests of the child in all circumstances, creating flexibility in formal rules and processes, and ensuring that procedural matters are not elevated above the fundamental rights of children concerned.

## **Communicating with, and facilitating communication of, children with mental disabilities**

The section provides a number of guidelines for entering respectful and supportive dialogue with children with mental disabilities, including those with communication impairments and alternative forms of expression. It also presents some specific promising practices identified during the project in the context of police interviews and court hearings, drawn from Bulgaria, the Czech Republic, Lithuania and the UK.

## **Building trust and rapport**

Provides an introduction to some of the soft skills necessary so that children feel safe and supported to communicate and participate in justice processes. Areas covered include breaking the ice, body language, listening skills and maintaining trust when absent.

## **Flexibility and innovation in proceedings**

A number of suggestions are provided in this section for making court hearing less intimidating for children with mental disabilities, and the importance of a child-centred approach is stressed. Recommendations include arranging preliminary visits to the court room, the use of clear and simple language, placing everyone on the same level, allowing children to sit with their parents or carers and restricting the attendance of members of the public and reporters.

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## Delivery of training, syllabus and bibliography

The core materials are supplemented by a guide on the delivery of the training in multidisciplinary settings. A number of training methods are proposed, including:

- Initial training for broad groups of professionals;
- Development of Continuing Professional Development programmes by specialist professional associations;
- Involving children and adults with mental disabilities in the design and provision of training;
- Providing training on a multidisciplinary basis; and
- Creating direct opportunities for professionals to meet and work alongside children with mental disabilities, their families, and placements in human rights NGOs.

The syllabus proposes a set of twelve thematic classes for professionals based on the core materials and skills training content. Each class sets out core background reading, presents

questions for discussion, and provides a number of scenarios based on real life situations for professionals to consider.

Finally, an annotated bibliography is presented in an attempt to draw together a broad and deep range of materials for professionals in many of the project languages, and to stimulate further and deeper independent study. The materials include news articles, child-friendly materials, easy-to-read materials, monitoring guidance, toolkits, access to core UN materials and other information. It is hoped that this repository will steadily develop and be updated as new professional materials become available beyond the life of the project.

For further information on any aspect of the project, please get in touch at [mdac@mdac.org](mailto:mdac@mdac.org).

