Access to justice is essential for the protection of the rights of children. It is especially important for protection from discrimination, violence, abuse and exploitation and for ensuring their best interests in all actions involving or having an impact on them. Due to their dependent status, children are most vulnerable when they need the justice system or come into contact with it, as victims, witnesses and offenders, or when judicial or administrative intervention is required for their custody or protection. Children living in poverty are particularly exposed to denial of their rights and are at additional risk of exploitation.

Aims and methodology

The report aims to:

- Identify barriers to the availability and effectiveness of access to justice for children across jurisdictions;
- Draw together examples of strategies and solutions that have been used to overcome those barriers; and
- Provide insights into how examples of good practice may be transferable internationally to inform access to justice practices.

The report explores law and practice in individual countries with a view to understanding national issues as international challenges. It thus analyses national practices that seek to understand and overcome barriers to access to justice for children against the international context, defined, on the one hand, by the protection of the human rights of children (particularly, the UN Convention on the Rights of the Child (CRC)) and, on the other, by the Sustainable Development Agenda, particularly, Sustainable Development Goal 16, which is to ‘[p]romote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels’. Goal 16 is a key reference point for the international pledge to draw children out of poverty and trigger their human development.

The report is part of a research project carried out by the Bingham Centre for the Rule of Law and commissioned by the International Bar Association (IBA) Access to Justice and Legal Aid Committee (‘the Committee’) with support from the Law Society of England & Wales and the Bundesrechtsanwaltskammer (BRAK) (the German Federal Bar). The report was preceded by a briefing paper entitled ‘Children and Access to Justice in the Agenda for Sustainable Development’ published in May 2016. As part of its mission, the Committee has undertaken research into issues it sees as being of prime contemporary importance.

The Committee’s goals in undertaking and presenting this work are to:

- Raise awareness of the different types of barriers to access to justice for children and of different ways of addressing those barriers;
- Provide a valuable tool for lawyers, practitioners, civil society organisations and others who are engaged with the design of reforms, projects and programmes that address key problems affecting access to justice for children, thus ensuring that rights are enforced in reality and enjoyed in practice, rather than existing solely on paper; and
- Provide a basis for further discussion and research into how the legal community, working with civil society and governments, can be involved in maintaining or improving access to justice for children, especially in times of austerity.

Methodologically, the report draws from an extensive desk-based review of the literature and international legal sources on access to justice for children; a survey completed by legal, academic and related professionals, especially those with expertise in child law,
representing 22 jurisdictions across the world; additional previously unpublished data from a Council of Europe (European Commission on the Efficiency of Justice) survey covering information on 48 European states and entities; and an expert workshop hosted by the Law Society of England and Wales on 11 July 2016. The report consists of six chapters. After explaining the project context and aims (chapter 1) and methodology (chapter 2), the main body (chapters 3, 4 and 5) examines national practices, exploring how access to justice for children is affected by: (i) information and awareness of rights; (ii) strategies and processes for accountability (both of those who violate the rights of children and where children have acted to violate the rights of others); and (iii) systemic barriers and solutions within the operation of criminal, civil and administrative justice systems.

Findings

Key findings of the report include:

- First, that while there is an increasing recognition of the right of children to be involved in decisions affecting them, compatibly with their competence, this right of active engagement still poses a challenge in many jurisdictions. There is broad evidence of state practice aimed at addressing this problem at the roots through dissemination of information on children’s rights and on the content of the CRC to both children themselves and to adult stakeholders, including parents, teachers and carers. The attitude of governments in this regard is, however, often shaped by the lack of resources targeted specifically to children, and this may affect more severely particularly disadvantaged groups of children, such as migrants and asylum seekers.

- Secondly, research findings suggest, in light of several practical examples, the important role played by effective and independent redress mechanisms, established by law and provided with a broad children’s right mandate.

- Thirdly, the study finds that in recent years there has been progress towards the recognition of the special needs of children when they encounter the justice system, whether as offenders, witnesses or victims. A broad array of special arrangements aimed at ensuring the effective participation of children in judicial proceedings have been incorporated in different jurisdictions, but the specificity and effectiveness of such practices varies across countries.

In looking at how the exploration of national practices can assist in an understanding of access to justice barriers and solutions as international challenges, the concluding chapter (chapter 6) looks into the ways that the Sustainable Development Agenda provides some common ground for the opportunities and directions that might be taken in the coming years. In particular, it sets out five important pathways through which lawyers involved in advocacy, law reform, drafting of new legislation, legal education and in providing legal assistance and representation can make a uniquely useful contribution to the delivery of the benefits of the Agenda for children. They can do so by:

- Helping place the SDGs in a legal context, both by contributing to a better understanding of the legal significance of the SDGs framework, and by bringing the goals’ language, overall vision and general principles in legislative processed and in legal arguments in the case law. The legal community has competence, expertise and the tools to identify and address poverty and development challenges where law is either part of the cause or part of the solution.

- Promoting legal interpretations that are compatible with sustainability objectives and goals, working to ensure that laws implement, reflect and are inspired by sustainability concerns.

- Informing the understanding of legal concepts involved in data collection and promoting evidence-based policy reforms.

- Contributing to the legal empowerment of the most vulnerable through legal assistance and representation in their day-to-day work.

- Providing legal support and technical assistance to governments and civil society organisations aimed at strengthening the understanding of the importance of legal frameworks in the context of sustainable development.

The more the legal community recognises it can play both national and international roles in the fight against poverty and the ways that its expertise can be deployed to that end, and the more proactive lawyers are in working towards and facilitating the delivery of the objectives of the Agenda for sustainable development, the better the prospects for children around the world.

A draft preview version of the report is available online from:
Access to Justice & Legal Aid Committee: www.ibanet.org/PPID/Constituent/AccessToJustice_LegalAid/Default.aspx


The draft version of the report has been produced for preview at the IBA Annual Conference, Washington DC, September 2016. It excludes material that draws on new Council of Europe data that is under embargo until 6 October 2016. The final version will be available to view soon on the same websites.

The Access to Justice and Legal Aid Committee web site provides additional resources including summaries of projects from across the globe and the two previous reports on barriers to access to justice.