

Questionnaire for NGOs and other stakeholders on access to justice and remedy

This submission is made on behalf of the Child Rights International Network - CRIN (www.crin.org), 13 April 2017.

This submission addresses children's access to justice in the context of contemporary forms of slavery.

Question 1

Please provide information on your organisation and its work on access to justice and remedy for victims of contemporary forms of slavery, including the countries in which you work on this issue.

The Child Rights International Network (CRIN) is a global research, policy and advocacy organisation. Our work is grounded in the UN Convention on the Rights of the Child. In 2016, we completed a global research project on access to justice for children, which produced country reports for 197 jurisdictions and a report analysing our findings. The reports map national laws against international standards on access to justice for children and the global report analyses practices and trends across the world. All of the research is available online at: www.crin.org/home/law/access. CRIN has also conducted research on child domestic workers across the Middle East and North Africa and maintains a database on children's rights case law, from which this submission draws under relevant questions.

Question 2

A. Please characterise the legal and/or policy frameworks relevant to access to justice and remedy in place in the country or countries that your organisation works in, as well as any global trends you would like to highlight. Please include information about provisions criminalising contemporary forms of slavery, those guaranteeing access to justice and remedy and measures to identify and support victims of contemporary forms of slavery.

In 2016, CRIN published reports on 197 jurisdictions, including all UN States on how the legal systems permit children to access justice. The individual country reports are available at: www.crin.org/node/42362. The reports are based on a questionnaire and address four themes: the status of the Convention on the Rights of the Child in national law; how domestic law treats children involved in legal proceedings; the legal means to challenge violations of children's rights and practicalities involved in challenging rights violations through the legal system. All reports contain full citations to the relevant legislation and case law.

This submission is intended to be short, but we would be able to provide detailed information on any of these areas and for any country if this would be useful in the preparation of the Special Rapporteur's thematic report.

Question 3

Please detail relevant jurisprudence, including any landmark cases, which demonstrate effective access to justice for victims of contemporary forms of slavery, and provide copies of any judgments if possible.

CRIN maintains a database on judgments from national, regional and international courts on cases related to children's rights. The judgments discussed under this heading are drawn from this database and more detailed summaries of the cases and links to the text of the full judgments are provided in the footnotes.

Extraterritorial jurisdiction for slavery and forced labour has been addressed by a number of courts. Litigation against Nestle and three other multinational corporations in the United States has been ongoing for many years as to whether they can be sued for aiding and abetting child slavery in cocoa plantations in Côte d'Ivoire.¹ In a separate case, the US Court of Appeals found that corporations could be found liable for violations of customary international law, but that in the case before the court, the company had not violated customary international law with regards to child labour on a rubber plantation in Liberia.²

Several courts have addressed the **positive obligation of States to protect people from domestic servitude and forced labour**. The European Court of Human Rights has found that France failed to set in place a legislative and administrative framework to combat servitude and forced labour in two separate judgments.³

Courts have also dealt with the **prosecution of children for crimes committed in the context of forced labour**. The Court of Appeal in the United Kingdom quashed the convictions of four 16-year-old Vietnamese victims of trafficking who had been prosecuted for drug offences committed while they were being forced to grow cannabis.⁴

International complaint mechanisms have also addressed issues of contemporary forms of slavery. The African Committee of Experts on the Rights and Welfare of the Child found that the failure of Senegal to protect talibé children from forced begging amounted to a breach of the African Charter on the Rights and Welfare of Children.⁵ The National Contact Points for the OECD Guidelines for Multinational Enterprises have addressed complaints on the issue of forced child labour in supply chains, including in relation to a French company that had purchased cotton from Uzbekistan. The case found no violation of the Guidelines for Multinational Enterprises but gained voluntary commitments from the company on the

¹ See *John Doe and others v. Nestle USA and others* [2015] Case No. 10-56739, Court of Appeals for the 9th Circuit. Summary and full judgment available at: www.crin.org/node/42727. Note, the case is ongoing.

² *Flomo v. Firestone Natural Rubber Co LLC* [2011] 643 F.3d 1013, Court of Appeal 7th Circuit. Summary and full judgment available at: www.crin.org/node/40084.

³ *Siliadin v. France* [2005] Application No. 73316/01. Summary and full judgment available at: www.crin.org/node/7007. *C.N. and V v. France* [2012] Application No. 67724/09. Summary and full judgment available at: www.crin.org/node/42455.

⁴ *L, HVN, THN and T v. R* [2013] EWCA Crim 991. Summary and full judgment available at: www.crin.org/node/7200.

⁵ *Centre for Human rights, University of Pretoria and La Recontre Africaine pour la Defense de Droits de l'Homme v. Senegal* [2014] Decision No. 003/Com/001/2012. Summary and full judgment available at: www.crin.org/node/41561.

use of cotton from Uzbekistan.⁶ In the UK, the NCP found Afrimex (UK) Ltd. had failed to conduct sufficient due diligence to ensure that its trading with groups in eastern areas of the Democratic Republic of the Congo did not negatively impact human rights, including through child labour and forced labour.⁷

There are a number of examples of successful **national level public interest litigation** on forced labour. In India in 2011, an NGO brought a complaint about confinement and forced labour of children in circuses triggering the Supreme Court to order the prohibition of the employment of children in circuses, raids on circuses to liberate children and rehabilitative care for children who had been affected.⁸ India's constitutional provisions on public interest litigation and extensive rights provisions mean that the national legal system is well suited to this form of explicitly rights based litigation.

Question 4

Please describe specific support that is in place for victims of contemporary forms of slavery who seek obtain access to justice and fulfil their right to an effective remedy, including but not limited to, shelters, other forms of housing, legal aid, visa support, witness and victim protection measures, livelihood or financial support and counselling in the country or countries that your organisation works. Please also include information about global trends in the provision of such support that you would like to highlight.

This section will draw on CRIN's research on child domestic workers in the Middle East and North Africa (MENA) and so is specific to children in contemporary forms of slavery in this context. Examples provided below are from Jordan, Lebanon, Morocco and Saudi Arabia.

Administrative complaint mechanisms, usually organised under a ministry of labour, are common complaint mechanisms for domestic workers alleging abuses that may amount to slavery or forced labour. In Jordan, for example, the ministry is empowered to facilitate the resolution of disputes between householders and workers, to carry out inspections and impose fines for violations. However, the approval of an employer is required to conduct an inspection,⁹ seriously hampering this mechanism as a means of addressing serious abuses that may amount to contemporary forms of slavery. The Jordanian ministry of labour is also empowered to prevent abusive employers from hiring domestic workers in the future,¹⁰ as can its Saudi equivalent,¹¹ but this is not a remedy for the victims themselves, only an attempt to guarantee non-repetition. Morocco has used its Child Protection Units to major cities in a small number of cases of abuses of child domestic workers, though the director of

⁶ *Sherpa and ECCHR v. Devcot* [2012] 21 septembre 2012, Communiqué du Point de contact national français chargé du suivi des principes directeurs de l'OCDE à l'intention des entreprises multinationales. Summary and full judgment available at: www.crin.org/node/42666.

⁷ *Global Witness v. Afrimex (UK) Ltd.* [2008] Summary and full judgment available at: www.crin.org/node/42660.

⁸ *Bachpan Bachao Andolan v. Union of India and ors.* [2011] INSC 403. Summary and full judgment available at: www.crin.org/node/7184.

⁹ Regulation 90/2009 on Domestic Workers, Cooks, Gardeners and Similar Categories, Article 11.

¹⁰ Instructions, Terms and Procedures for Licensing Private Officers Working in the Recruitment and Hire of Non-Jordanian Home Workers (issued pursuant to the provisions of Articles 9 and 15 of Regulation No. 89/2009), Article 12.

¹¹ Decision No. 310 of 1434 on Domestic Workers, Article 17.

the Casablanca unit has estimated that it has assisted fewer than ten child domestic workers.

National Human Rights Institutions across the region also have limited powers to address complaints. Jordan's National Centre for Human Rights has received a number of complaints related to domestic workers (71 in 2009,¹² 54 in 2010¹³) but the published figures do not indicate how the cases were resolved, so it is difficult to comment on the success of the mechanism in providing redress.

Embassy run shelters have also become a common response across the Middle East to domestic workers fleeing abuse, including that which may have amounted to slavery or forced labour. Embassies may also receive complaints from migrant domestic workers and a source of advice and assistance in trying to escape abusive domestic work. In Jordan, for example, the Sri Lankan Embassy received 1,431 complaints in 2009 and 784 in the first six months of 2010 from migrant domestic workers.¹⁴ Several embassies in Saudi Arabia run similar shelters, the Indonesian Embassy in Riyadh reported that it received 3,687 complaints from domestic workers in 2006 and 3,428 in 2007. The Sri Lankan Embassy reports that it receives between 200 and 300 complaints per month and the shelter for Filipina domestic workers in Riyadh housed 1,129 women in 2007.¹⁵

Question 5

Please describe national and/or global measures that you are aware of that allow victims of contemporary forms of slavery to pursue access to justice and remedy for violations of their human rights taking place in national or international supply chains.

As discussed in question 3, litigation is ongoing to use extraterritorial jurisdiction to seek remedies for violations of human rights taking place in national and international supply chains.

Question 6

This section focuses on trends in access to justice for children, drawing on our global research on the issue. The relevant issues are dealt with briefly in this submission, but full details of relevant laws are available through individual country reports on our website¹⁶ and corresponding global report.¹⁷

A. Please describe the main challenges and barriers identified in the country or countries in which your organisation works to ensuring that victims of contemporary forms of slavery have access to justice? Please also specify any global trends that you are aware of.

¹² The National Center for Human Rights, *Sixth Annual Report of the National Center for Human Rights on the Human Rights Situation in the Hashemite Kingdom of Jordan* 2009, p. 95.

¹³ The National Centre for Human Rights, *Human Rights Situation in the Hashemite Kingdom of Jordan* 2010, pp. 117, 186-188.

¹⁴ Human Rights Watch and Tamkeen, *Domestic Plight: How Jordanian law, officials, employers, and recruiters fail abused migrant domestic workers*, September 2011, p. 9.

¹⁵ Human Rights Watch, *As if I am not Human*, July 2008, p. 23.

¹⁶ Available at: www.crin.org/node/42362.

¹⁷ Available at: www.crin.org/node/42383.

This submission focuses on access to justice for child victims, so relevant information for this section is addressed under part B.

B. Please elaborate on any specific challenges faced by vulnerable groups, for example women, **children**, those living in poverty and/or in rural areas, minority groups, indigenous people, women, children, people determined as being of low caste, and migrant workers, in obtaining access to justice and fulfilling their right to remedy.

Children face numerous legal and practical barriers in accessing justice in general, many of which are exacerbated by victims of contemporary forms of slavery.

Restrictive laws on ***standing*** - that is the rules governing who is able to bring a case to court - commonly prevent children from challenging violations of their rights. While almost all legal systems allow cases to be filed in the name of children, restrictions on who must file a complaint are commonly much more restrictive. Requirements that children approach the courts exclusively through a parent or guardian may exclude children who do not have this kind of support, which may be a common situation for children affected by contemporary forms of slavery. Flexible rules allowing children to at least trigger cases or for the courts to instigate actions when they are approached informally by children can avoid this barrier.

Parental consent requirements can also create barriers to children accessing justice. While most parents will have the best interests of their children at heart, overly strict requirements that children act through their parents can prevent cases reaching courts - particularly where parents are perpetrators of abuses, or where they have conflicting interests. The most restrictive measures in this regard are found in the laws of MENA countries, which in Algeria,¹⁸ Kuwait,¹⁹ the UAE²⁰ and Qatar,²¹ for example, strictly vest parental authority for initiating legal proceedings with a child's father or grandfather. The practice is not restricted to the Middle East, Niger²² too vests authority exclusively with a child's father when parents are married while Honduras grants almost exclusive authority to fathers in "protecting and directing [the child] and administering their property".²³

Inadequate provisions permitting ***children to be heard and participate in legal proceedings*** can act as a further bar to children accessing justice. A little over a quarter of States enshrine a right of children to be heard in all matters concerning them, while a further 84 guarantee a more qualified right to be heard in certain legal proceedings. More than a quarter of States - 58 countries spread across the Americas, Asia, Africa and MENA - do not recognise the right to be heard in their legislation. The right is particularly poorly protected in Asia and MENA.

¹⁸ Family Code, Articles 81 and 82.

¹⁹ Personal Status Law (n 11), Article 209. Fathers assume guardianship, followed by the paternal grandfather or another paternal relative in the absence of the father.

²⁰ Personal Status Code 2005, Articles 32 and 34

²¹ Law No. 40 of 2004 on the Guardianship Over Minors' Funds, Article 4.

²² Code Civil, Book I, Title IX, Articles 372 and 373.

²³ Civil Code of the Republic of Honduras, Article 238.

Legal assistance and legal aid is core to achieving access to justice for anyone, but children in particular. Despite this key role, however, functioning legal aid systems are completely absent in 42 countries worldwide, meaning that 220 million children have no access to free legal aid in any type of legal action.²⁴ The remaining countries have some form of legal aid available for children, often in very limited circumstances, while only 28 make some form of legal aid available for all types of case.²⁵ Restriction of legal aid provision to large cities is common and presents a serious practical barrier to accessing necessary legal advice and assistance.²⁶

Strict time limits on bringing cases to court can present a serious barrier to children accessing remedies, particularly for young children who may not be able to approach the courts until they reach the age of majority. For cases involving contemporary forms of slavery, this problem is compounded by the fact that the child may be deprived of liberty and unable to reach authorities to lodge a complaint. Almost 60 percent of countries do not allow for the relaxation of limitation periods for children, allowing children to bring complaints when they become able to do so: 84 countries have some form of rule permitting the relaxation of limitation periods in certain circumstances, whether tolling the limitation period until the child reaches adulthood or relaxing strict time limits for certain types of offences, most commonly sexual abuse.²⁷

Children face serious barriers in **giving evidence**, both in terms of their right to do so at all and in the manner in which the courts permit them to do so. A quarter of States set strict minimum ages for appearing as a witness or attaching limited weight to the evidence of a child. Rigid age limits fail to recognise the evolving capacities of children, that some children will be capable of giving evidence when they are younger than others and the fact that even the youngest children are able to express their views²⁸ and should be able to when it is relevant to a case. Once the hurdle of being able to give evidence is overcome, child-friendly mechanisms are required to ensure that children are able to give evidence effectively. This will particularly be the case where the child is a victim and the trial process risks revictimising the child. Yet child-friendly procedures allowing children to give evidence exist in only a third of countries.²⁹

Customary courts and traditional authorities can be a quicker more cost-effective and informal means of children seeking redress, but they also risk perpetuating traditional attitudes harmful to children. Customary justice mechanisms commonly discriminate against girls or fail to provide remedies for rights violations of girls. The practice of “*te kabara bure*” (formal apology) in Kiribati, for example, is commonly used in sexual violence cases and

²⁴ CRIN, *Rights, Remedies and Representation: A global report on access to justice for children*, 2016, p. 29.

²⁵ Ibid. Note, by this, it is meant that legal aid is available in criminal, civil, administrative, family court and any other judicial setting, though not that there are no limits on its provision.

²⁶ For further discussion, see CRIN, *Rights, Remedies and Representation: A global report on access to justice for children*, 2016, p. 29 to 30.

²⁷ CRIN, *Rights, Remedies and Representation: A global report on access to justice for children*, 2016, p. 32.

²⁸ Committee on the Rights of the Child, General Comment No. 7 (2005) implementing child rights in early childhood, CRC/C/GC/7/Rev.1, 20 September 2006, para. 14.

²⁹ CRIN, *Rights, Remedies and Representation: A global report on access to justice for children*, 2016, p. 30-31.

risks reducing a perpetrator's sentence or resulting in impunity.³⁰

Guaranteeing the **privacy** of children in legal proceedings is key to ensuring that children are not revictimised while seeking redress for violations of their rights. Almost three quarters of States have legal provisions of varying quality to protect the privacy of children involved in proceedings, varying from closed door hearings³¹ to criminalising the publication of information identifying children involved in court proceedings. Preventing the publication of the names of children involved in criminal proceedings is a simple and widely adopted provision, although it commonly has exceptions permitting the naming of children with the approval of the court. Bangladesh, India, Nepal and the United Kingdom all have such rules. Exceptions have the potential to be seriously damaging to children involved when the decision to release their information is not made based on what is in the best interests of the child.

Question 9

In your view what are the necessary components of a comprehensive human-rights based approach to ensure that victims of contemporary forms of slavery can have access to justice and fulfil their right to an effective remedy?

Access to justice for children means that they must be able to use and trust the legal system to protect their human rights. The legal system must provide children the means to obtain a quick, effective and fair response to protect their rights; the means to prevent and solve disputes; mechanisms to control the abuse of power; and all of this must be available through a transparent, efficient, accountable and affordable process.

Question 10

Please provide any research, data or other information that your organisation has produced or is aware of relating to access to justice and remedy for victims of contemporary forms of slavery.

As identified above, CRIN has produced the following relevant resources:

- Rights, Remedies and Representation: A global report on access to justice for children, 2016: www.crin.org/node/42383.
- Country reports for children in 197 jurisdictions: www.crin.org/node/42362.
- Model report on access to justice for children, detailing relevant international standards: www.crin.org/node/31972.

³⁰ Summary prepared by the Office of the United Nations High Commissioner for Human Rights, para. 23; Compilation prepared by the Office of the High Commissioner for Human Rights, Universal Periodic Review, A/HRC/WG.6/8/KIR/2, 19 February 2010, paras. 27-28.

³¹ See, for example, country reports for Samoa, Guinea, Moldova and Nauru, available at: www.crin.org/node/42362.