

Report of the ACCESS project Transnational Exchange Roundtable
Access to Justice for Children Accused and Suspects in Criminal Proceedings project 18-19 March 2025
Brussels

On 18 and 19 March 2025, the ICJ in cooperation with partner NGOs - Forum for Human Rights (FORUM), Bulgarian Helsinki Committee Association (BHC), Helsinki Foundation for Human Rights (HFHR), Défense des Enfants International (DEI Belgique), Nederlands Juristen Comité Voor Demensenrechten (NJCM) - held a transnational exchange roundtable in Brussels to discuss challenges in ensuring child-friendly justice systems across the EU. The roundtable was organized under the [Access to Justice for Children Accused and Suspects in Criminal Proceedings \(ACCESS\) project](#). ACCESS seeks to foster EU-wide effective and non-discriminatory access to justice for children in criminal proceedings, and respect for children's procedural rights amongst legal and other justice professionals.

The content of this note is a summary of the discussions and opinions expressed by participants during the roundtable.

On 18 March, the roundtable focused on cross-professional networking and discussion on cross-cutting issues, with the involvement of keynote speakers. On 19 of March, participants were divided into separate workshops by professional group (lawyers, judges, prosecutors and law enforcement personnel, social workers and probation officers), and by national groups to discuss specific issues relevant to their professional focus area, and country of origin.

1. Systemic inequalities

The issue of inequality was a cross-cutting theme throughout the roundtable. Professor of Criminology and Youth Penology, Vrije Universiteit Brussel (VUB) Janneke Christiaens delivered a presentation on how systemic inequalities affect children in vulnerable situations in criminal proceedings. She highlighted that systemic societal issues are often reframed as individual problems under welfare-based approaches. In the justice system, profiling occurs from the outset, especially for children from lower socio-economic background and from certain neighbourhoods, with young people being particularly visible in public spaces and often unable to navigate interactions with authority figures.

The juvenile justice system reinforces vulnerability, creating a “self-fulfilling prophecy.” Its logic is reaffirmed through the diagnosis of problematic or delinquent behaviour, and the statistical tools used for risk assessment are inherently biased. These tools rely on data from individuals already within the system, transforming systemic inequalities into predictive models of dangerousness or recidivism. Over time, they become proxies for decision-making, further entrenching disparities.

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Professor Christiaens also emphasized that young people in the justice system often feel isolated, stigmatized, and powerless. Upon leaving the system, they frequently experience a sudden loss of State support, leaving them unprepared for adult life.

ICJ Commissioner and former member and Chair of the UN Committee on the Rights of the Child Mikiko Otani noted that juvenile justice issues intersect with broader social challenges, including migration, healthcare, family dysfunction, abuse, substance use, and disability. Citing the UNCRC's holistic approach, she emphasized that many of these concerns extend beyond the scope of juvenile justice yet share common structural roots.

1.1 Disability: mental health

A considerable part of the discussions on inequalities revolved around disabilities and in particular regarding mental health, and how children with these challenges are overrepresented in criminal proceedings and how current approaches can both help and harm. Former UN Special Rapporteur on the Right of Everyone to the Enjoyment of Highest Attainable Standard of Physical and Mental Health and Professor of child and adolescent psychiatry and public mental health at Vilnius University, Dainius Pūras noted that **mental health is finally receiving global attention**. According to a UNICEF 2021 report, there is now greater understanding and political will to invest in child and adolescent mental health, identifying it as a priority. The modern human rights approach, as enshrined in the CRC, provides guiding principles for protecting the rights of children with disabilities—including the right to life, protection from violence, and preservation of identity.

Two key issues persist:

- **Overuse of the Medical Model:**

While various approaches—medical, welfare, and others—were initially designed with good intentions, overreliance on the medical model has produced harmful outcomes. Excessive medicalization can lead to the criminalization and stigmatization of children, reinforcing a counterproductive system. Children with disabilities are often categorized into conditions such as autism, psychotic disorders, conduct disorders, intellectual disabilities, anxiety, depression, ADHD, eating disorders, and others. However, none of these categories come with a definitive biological marker, fuelling debates on what constitutes “normal” behaviour.

- **Impact of Diagnosis:**

Professor Jenneke Christiaens observed that psychiatric diagnoses can shape a child's identity, sometimes detrimentally. Some participants argued that a diagnosis may provide clarity and facilitate procedural accommodations in legal proceedings; therefore, caution was advised to avoid stigmatizing psychiatric institutions, which are fundamentally intended to provide support.

A significant power imbalance exists when psychiatrists, often inadvertently, disempower patients. This tension is evident in the **debate between classical psychiatry**—which may permit involuntary measures - **and human rights experts** who argue for upholding human dignity. The discussion emphasized that interventions should not focus solely on individual deficits but should also address **broader relationships and social determinants of health**. Reducing violence, discrimination,

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and inequalities is essential. Children deprived of liberty, particularly in psychiatric institutions where their rights are often even more restricted than in prisons, cannot experience healthy development—even if the right to health is formally recognized.

The Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD) offer differing perspectives:

- The CRC, shaped during a fragile Cold War compromise, sometimes permits measures as a "last resort" without sufficient alternatives.
- In contrast, the CRPD sets a much higher standard, especially regarding involuntary measures and the size and nature of institutions. For example, debates about making institutions "smaller" are challenged by the CRPD's stance, which argues against institutionalization altogether.

2. Rights-based Vs. Care or Enforcement-based Approaches to Juvenile Justice

Mikiko Otani reflected on how the language we use—terms such as "protective," "care," and "welfare"—shapes perceptions of children. Although such terms appear in the CRC, they must be interpreted through a rights-based lens. In practice, the use of these words sometimes leads to restrictive measures; for example, the notion of "hearing children" can degenerate into a mere formality rather than a genuine effort to understand their views.

A rights-based approach to juvenile justice entails several key elements:

- **Recognition of Children as Rights Holders:** The CRC explicitly recognizes children as rights holders, with detailed articles that guarantee their rights—unlike other international human rights instruments, which often refer to "all human beings" in general terms. A rights-based approach mandates that children be afforded the same comprehensive rights standards as adults. For instance, while Article 37 of the CRC ensures a right to legal assistance for children, it does so at a level that may not be as robust as the corresponding provisions in instruments such as Article 14 of the ICCPR.
- **Holistic Consideration:** Although the discussion is situated within the criminal justice context, a rights-based approach requires viewing children's experiences holistically, acknowledging that legal issues are interconnected with broader social determinants.
- **Recognition of Evolving Capacities:** A fundamental principle is recognizing that children's capacities evolve. Those below the age of criminal responsibility, for example, should benefit from enhanced procedural safeguards. However, baseline studies suggest that current practices often fall short of this ideal. A genuine rights-based approach would ensure that all international human rights—including access to justice and the right to a remedy—are fully applied to children.

3. Children below the age of criminal responsibility

A varied approach across countries regarding the age of criminal responsibility emerged. The Netherlands stood out among the others for its particularly low age of criminal responsibility (12 years old), although a Dutch prosecutor explained that there is an internal directive from the public prosecutor's office advising against prosecuting children between 12 and 14, even though the Ministry of Justice remains firm on its prosecutorial policy.

The placement of these children within juvenile justice systems also follows a heterogeneous approach

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across the countries. For example, in Belgium, children are generally placed in alternative settings under civil protection laws (the age of criminal responsibility in Belgium is 18). These placements involve various childcare institutions, including open facilities and centres addressing emotional problems. Such measures are intended as a last resort, emphasizing care over punitive measures. In contrast, in Poland, under the Act on Juvenile Justice, children are placed by family courts into one of three types of closed institutions. Detention can sometimes extend until the child reaches 24 years of age, and in some instances, these facilities are located in former prisons.

While formally the age of criminal responsibility in Belgium is set at 18, a representative from Défense des Enfants International argued that equating the minimum age with the age of majority undermines the CRC's intent to create a distinct juvenile justice system for children. Children do face criminal-like proceedings and outcomes, even if they are younger than 18 in practice. It was said that the minimum age should reflect the point at which a child can understand the wrongfulness of their actions. Regardless of age, it is essential that children receive appropriate legal safeguards—such as access to an independent and competent lawyer.

4. Diversions & Restorative Justice

Many speakers argued in favour of diversions as a means to avoid the inevitable discrimination and adverse outcomes that even the best judicial systems can produce. Professor Christiaens emphasized the necessity of **early diversion**—ideally initiated even before police involvement. In Belgium, although diversion has been attempted, its implementation has not been very successful. She advocated for enhanced investment in 'street' social workers – an example of good practice in Flanders - empowering them to engage directly with vulnerable or marginalized individuals in public spaces, rather than in traditional office settings. This approach allows them to explore diversion options at every stage, including during prosecution and to support the removal of criminal records for minors.

Dainius Pūras highlighted that **children with disabilities** could significantly benefit from diversions. However, due to communication barriers and other challenges, they are less likely to be offered such opportunities.

Mikiko Otani noted that although CRC General Comment 24 promotes diversions, the application is complex. Often, children are first contacted by the police, and their parents—typically from poorer backgrounds—tend to accept diversions readily, mistakenly perceiving it as a simple alternative that does not require legal counsel. Without proper support, these children may internalize the idea that they have done something wrong, especially since diversion in that context does not uphold the **presumption of innocence**.

Diversion, while appearing less formal, carries significant legal consequences. There is a pressing need to **provide clear legal information and ensure access to counsel**—even within diversion frameworks—to safeguard the rights of children.



5. Deprivation of Liberty

During the discussion it was highlighted that certain facilities, while not formally established to deprive children of liberty, can still result in such deprivation due to their design or location. For instance, facilities situated in remote areas or those lacking basic accessibility features - such as stairs for children with disabilities - can effectively restrict freedom. It was emphasized that **alternatives to detention must adhere to the principle of last resort** too and be contextualized within the overall framework of the UN guidelines, recognizing that detention should only be considered when all other systems have failed.

Social workers and probation officers highlighted that deprivation of liberty often stems not from the child's behaviour but from issues within the family environment—such as abuse or severe socio-economic challenges. In many cases, a problematic family situation is used as justification for removing the child from their home, underscoring the need to address broader social and familial factors alongside individual behaviour.

6. Practitioners' needs

Across jurisdictions, all kinds of practitioners emphasized **the need for professionals to learn from one another and synergize their roles as well as for multidisciplinary training**. Without a **shared understanding of the justice system's purpose**, children face inconsistent approaches from different professionals. The concept of "extended professionals"—those who consider the societal context of their work—was highlighted as an important addition for improving juvenile justice. Additionally, professionals should have safe spaces to reflect on their practice and integrate lessons from experience.

A key challenge is the inherent power dynamic between professionals and children. Lawyers and judges must not only apply the law but also **acknowledge children's experiences as legitimate**. However, international discourse does not sufficiently address how children's rights should shape professional practices. As a Slovak judge pointed out, legal professions must incorporate **soft skills** as a fundamental requirement.

Lawyers, in particular, spoke about **role-playing exercises** conducted alongside judges, prosecutors, and other legal professionals to enhance mutual understanding of each profession's role. Financial constraints limit specialization, but initiatives by bar associations and universities—such as those in Leuven¹—could support projects with EU or DCI BE cooperation.

Judges stressed that the same judge should handle both child protection and youth crime, ensuring continuity (as is the case in the Netherlands and Belgium, but in contrast to the Czech Republic). They also expressed concerns about the minimum age of criminal responsibility, as children are sometimes

¹ <https://www.law.kuleuven.be/llmclinics/llm-clinics>



treated as adults. Nonetheless, even in systems with lower liability ages, they make an effort to avoid such treatment in practice.

Discussions then focused on **judicial training, which varies significantly across countries**: it should always be mandatory and of an appropriate duration. It was recognized as a concern that **judges often have limited opportunities for professional reflection**. As a suggestion, various practices were provided as examples. While the "supervision of judges" was discussed, it was noted that having someone observe the work of judges could feel too hierarchical or punitive; a team-based review of real-life cases was proposed instead. In this context, the Dutch practice of 'mirror reflections', also known as 'intervision', was highlighted. This is a professional development tool where judges engage in structured, cross-disciplinary discussions to reflect on their behaviour and decision-making processes, with the goal of receiving feedback and enhancing their self-awareness and judicial practices.² **Prosecutors** emphasized the importance of legal clarity in procedural law and the overall legal framework. While practice may compensate for legal ambiguities, the law should provide explicit guidance. Specialization and cooperation between specialized prosecutors were identified as key to improving the system.

Social workers and probation officers stressed that a more integrated approach is needed to ensure social interventions prioritize the child's well-being and development rather than focusing solely on punitive measures. They also focused on how the individual assessment is conducted in each jurisdiction.

7. Good practices and potential ways forward

In Japan, the Bar Association has a **dedicated children's rights committee**, fostering a more holistic approach. They also conducted **research on gender bias in judicial decisions**, highlighting the role bar associations can play in ensuring fair treatment in court: this model could similarly be applied to advance children's rights in legal proceedings.

The Netherlands has initiated **moral discussions on youth criminal justice** and a promising **mentorship programme** which pairs children with non-professional mentors who support them in their daily lives. Furthermore, Dutch courts conduct annual **"intervision" sessions**, where judges reflect on cases among themselves without judgment. The Netherlands' public prosecutor traineeship includes a **module where trainees work with individuals who have experienced detention**. This provides valuable insight into how young people perceive the criminal process and the role of prosecutors.

With regard to deprivation of liberty, in the Netherlands, the model of **small-scale facilities**, where children are integrated into neighbourhoods and can continue their daily life, is being explored. While this approach has the potential to reduce the punitive nature of detention, challenges remain in its implementation, particularly due to the more punitive approach of the system and a lack of staff.

² <https://www.rechtspraak.nl/SiteCollectionDocuments/The-Judiciary-System-in-the-Netherlands.pdf>, p. 28

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With regards to inequalities, the Netherlands has a **national programme aimed at supporting neighbourhoods labelled as "risky."** While this initiative starts with good intentions, it has faced criticism for potentially stigmatizing these communities, which may worsen the situation. Another good practice in the Netherlands includes the possibility of prioritizing house arrest over detention for families with children. However, this measure may raise concerns of indirect discrimination, as not all parents can afford to stay at home to supervise the child, and enforcement measures—such as controls carried out during the night—may disproportionately affect the well-being of children.

In Bulgaria, the Prosecutors' Association actively conducts training to enhance specialization and cooperation. Bulgaria has implemented a legal framework requiring **corrective measures when schools identify challenging behaviours.** These measures include group activities where the child in difficulty takes a central role and mentoring by an authoritative yet supportive adult. Additionally, the National Network for Children actively promotes multidisciplinary training to strengthen juvenile justice practices. Finally, reforms aim to improve juvenile justice by establishing **specialized rooms for hearings** and **unified methodological guidelines for all professionals.** There is a strong emphasis on **restorative justice practices,** which are being advocated through future legislative changes, particularly regarding diversion and individual assessments.

Belgium is exploring the use of **electronic supervision for children,** although concerns have been raised about its potential discriminatory effects and its impact on the child-parent relationship.

Ultimately, to implement a rights-based approach effectively, the following potential pathways emerged from the discussions:

- **Hear effectively all the children whose rights are affected by the proceedings or decision - not only those already within the system.**
- Juvenile justice should be viewed as an interactive and relational practice. Children are often first seen as offenders, which can lead to punitive reactions. **The system must focus on recognizing the child as a child and rights-holder before considering them as an offender.**
- A **more detailed development of General Comments** in these terms is desirable. General Comments n. 24, 13, 14 and 27, for example, all advocate for a shift from viewing children merely as passive recipients of protection to recognizing them as active rights holders. Building upon these foundations, further development of GCs could explore practical guidelines for implementing rights-based approaches in juvenile justice. This includes clarifying the meanings of terms such as "protection" and "welfare" to ensure they align with the principles of empowerment and respect for children's rights.
- Mental health issues should be addressed through social and positive health approaches; however, these are often difficult to implement in practice due to a lack of funding and support. The idea of treating violent behaviour through criminalization or the "mad or bad" perspective is outdated. This shift in perspective is crucial in reforming how children with mental health challenges are treated within the justice system.

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- The **role of educational systems** in resolving conflicts and preventing issues that may otherwise lead to children entering the justice system should be reconsidered. For example, in Austria there have been changes in the classification of drug use, with a shift in focus towards education and prevention rather than criminalization.
- The use of **criminal records** for children: participants emphasized the need for reforms to allow for the possibility of requesting deletion from the criminal record at the age of 18.
- **Consider avoiding prosecuting very young children to protect their future.** Mediation could be an alternative approach, giving victims' families a role while ensuring participation remains voluntary.

