EUROPEAN COMMISSION FOR THE EFFICIENCY OF JUSTICE (CEPEJ)

ACCESS TO JUSTICE FOR VULNERABLE GROUPS

"Strengthening the efficiency and quality of the judicial system in Azerbaijan"

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ACCESS TO JUSTICE FOR VULNERABLE GROUPS

Chapter 1: Introduction

1.1. Background

Access to justice, including access to a court, is a core component of the rule of law. It is a fundamental right in itself and also a precondition to the enjoyment of all other rights. Access to justice and courts is especially crucial for vulnerable groups and provides a unique tool to counter the discrimination (and oftentimes disrespect, lack of dignity or even violence) that they face. For example, vulnerable persons are frequently denied or have limited legal capacity (e.g. persons with disabilities or children) and have difficulty accessing courts or other quasi-judicial bodies. Paradoxically, however, those who need effective access to justice and courts most are the ones most frequently encountering barriers to it.

While each country has historically or culturally specific practices and situations that hinder access to justice for vulnerable groups, it is important to situate those country-specific experiences within the wider international legal context. Two dimensions of the international context are of special importance.

Firstly, international law establishes a comprehensive set of rights and minimum guarantees that are specifically tailored to the needs and condition of vulnerable groups. These are set out in international (such as the CRPD, CRC, CEDAW) or regional (e.g. the ECHR) instruments, to which Azerbaijan is a party, and are further defined in the practice and case law of their respective judicial or quasi-judicial bodies.

Secondly, the resolution to address vulnerability issues is an integral part of relevant equality and non-discrimination policies, including in the context of sustainable development. The 2030 Sustainable Development Agenda that the UN General Assembly unanimously adopted in September 2015[1] bears a strong potential to contribute in practical ways to the protection of vulnerable groups and to the enhancement of their welfare. It does so, first, through the clearly pledge to “leave no one behind” and second through the inclusion of a specific goal on the rule of law and access to justice (Goal 16 or SDG 16), which recognises the important role that law and justice have to play. SDG 16 sets out to:

[1] UN, Transforming our world: the 2030 Agenda for Sustainable Development, Resolution adopted by the General Assembly on 25 September 2015.

> '[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'.[2]

Quite importantly, monitoring the implementation of the 2030 Agenda will prompt the collection of data broken down by category – age, gender, ethnicity, migration status, disability, etc - to ensure that the most vulnerable groups of the global population are not left behind.[3] The absence of appropriate information, including statistical and research data, has an adverse impact and makes persons belonging to vulnerable groups and the challenges they face invisible at the policy level. The collection of comprehensive and reliable statistics enables governments to formulate and implement evidence-based policies.

1.2. Aims

The report aims to provide expert advice, in the form of a set of findings and recommendations, to Azerbaijani authorities on steps to promote and facilitate access to courts for vulnerable groups. This will be informed by international standards, best practices and the CEPEJ tools on efficiency and quality of justice. The report aims to achieve this by assessing the main legal issues and practices that operate as barriers to access to justice for vulnerable groups in Azerbaijan and highlight possible solutions drawn from the practice of various jurisdictions around the world.

This report has been commissioned by the CEPEJ project "Strengthening the Efficiency and Quality of the Judicial System in Azerbaijan" and is part of the project's on-going activities in this area. In commissioning this work the Project aims to:

- assess and raise awareness of the different types of barriers to access to justice and courts for persons with disabilities, and of ways to address those barriers;
- provide a valuable tool for policy makers, judges, lawyers, civil society organisations and others in increasing access to justice and courts for persons belonging to vulnerable groups, thus encouraging practical rights enforcement;
- create the opportunity to learn about national and international practices and prompt further discussion and research into how the legal community, working with civil society and governments, can be involved in maintaining or improving access to courts for vulnerable groups, especially in times of emergency and austerity.

[2] Goals, represent the general objectives, and are accompanied by more detailed Targets. Target 16.3 sets out 'Promote the rule of law at the national and international levels and ensure equal access to justice for all'.
3 'Leave no one behind' is the core motto of the Agenda.

1.3. Definitions and scope

Access to justice and to courts.

The concept of access to justice informing this report is a comprehensive one, which covers different stages of the process of obtaining a solution to civil, administrative or criminal justice problems. It starts with the existence of rights enshrined in laws and with awareness and understanding of such rights. It embraces access to dispute resolution mechanisms in courts and the availability of, and access to, counsel and representation. It encompasses the ability of such mechanisms to provide fair, impartial and enforceable solutions.

Effective remedy, fair trial, and equality.

The right to access to justice can be understood as being made up of, dependent on, and expanding the rights to effective remedy, fair trial, and equality. The right to an effective remedy speaks to substantive access to justice, while the right to a fair trial sets standards regarding procedural access to justice.[4] Non-discrimination or equality clauses can attach to the right to effective remedy and fair trial, further reflecting the foundation of a general right to access to justice.[5] Anti-discrimination provisions typically guarantee equality before the law, and/or protection from discrimination based on factors such as age, race, religion, or disability. Thus, effective access to justice and to a court creates an empowering environment in which persons belonging to vulnerable groups can better assert their legal rights and fundamental freedoms.

Vulnerable groups.

Despite its common use, the meaning of the concept of vulnerability is complex and vague.[6] There is however agreement among scholars from different disciplines that "vulnerability is analytically both a descriptive and prescriptive tool which involves exploring how societal or institutional arrangements originate, sustain, and reinforce vulnerabilities".[7]

[4] The Universal Declaration of Human Rights (UDHR) contains the earliest articulation of the right to an effective remedy (Art 8) and the right to a fair trial (Art 10).
[5] Equality rights are now fairly commonplace, and can be found in documents like the European Convention on Human Rights (Art 14), the Charter of Fundamental Rights of the European Union (Artt 20-26), the American Convention on Human Rights (Art 24), and the African Charter on Human and Peoples' Rights (Artt 2 and 3).
[6] Lourdes Peroni, Alexandra Timmer, Vulnerable groups: The promise of an emerging concept in European Human Rights Convention law, International Journal of Constitutional Law, Volume 11, Issue 4, October 2013, Pages 1056–1085, https://doi.org/10.1093/icon/mot042
[7] Ibid. fn. 26.

The concept of vulnerable groups has recently gained momentum in the case law of the European Court of Human Rights (ECtHR). The Court has used it for instance in cases concerning Roma, people with mental disabilities, people living with HIV, and asylum seekers. Building on that approach, this report will address access to justice issues in relation to four vulnerable groups: persons with disabilities, women, children, and persons belonging to minorities.

1.4. Methodology

The report relies on desk-based research and interviews.

Desk-based research mainly examines existing quantitative and qualitative data drawn from the literature regarding international solutions to overcome barriers to access to justice and best practices. The report draws on five international studies on access to justice carried out by the International Bar Association (IBA). The report also examines the Azerbaijani legal framework and its implementation, and the responses provided by Azerbaijan for the purpose of the CEPEJ-EVAL exercise.

A series of interviews were conducted with public officials at the Ministry of Justice, the Judicial Legal Council, the Justice Academy and the State Committee for Family, Women and Children Affairs of the Republic of Azerbaijan. Interviews were also conducted with judges in four courts in Azerbaijan – the Narimanov, Nasimi and Sabail District Courts and the Baku Appeal Court. A questionnaire was prepared to gain an understanding and evidence of the main challenges that vulnerable groups face with regard to access to justice – in particular access to courts. The first part of the questionnaire, containing general questions on the legal framework and the organization of the judiciary, was filled in by a CEPEJ national expert with the support of the Council of Europe Office in Baku. The second part of the questionnaire, containing specific questions on the measures implemented in practice to ensure effective access to courts for vulnerable groups, was part of the interviews in the four courts.

1.5. Structure of the report

This introduction explains the project's context, aims, definitions and scope, and methodology. Chapter 2 explains the legal framework and the domestic context in terms of budgetary and human resources for the judiciary and judicial statistics.

Chapter 3 constitutes the core of the report, identifying common problems and solutions to access to justice for vulnerable groups from international practice, and comparing these to the

law and practice in Azerbaijan. Throughout the report, there are text boxes with examples and case studies relating to the issues discussed. The sources for these are cited in short form, with details listed by chapter in the bibliography.

Chapter 4 summarises the recommendations made in the different sections of the report.

Chapter 2: Legal framework and domestic context

2.1. Ratification of core international conventions by Azerbaijan

Azerbaijan has ratified most of the main international and European conventions setting out the rights of persons in vulnerable situations covered in this report: the UN Convention on the Rights of the Child (CRC),[8] the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW),[9] the UN Convention on the Rights of Persons with Disabilities (CRPD),[10] and the Council of Europe's (CoE) Framework Convention for the Protection of National Minorities (FCNM).[11] It has also signed but not yet ratified the CoE's European Charter for Regional or Minority Languages.[12] Unfortunately, Azerbaijan is one of the few countries - alongside Russia - that has neither signed nor ratified the CoE Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).[13]

All these documents contain tailored provisions to ensure that the members of the respective vulnerable groups have effective access to justice and can therefore effectively bring judicial claims for alleged violations of their rights and freedoms enshrined in the conventions. For instance, in the case of persons with disabilities, Article 13 CRPD sets out that: "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 areas inhabited by national minorities, Article 10 of the FCNM requires the State Parties to allow the use the minority language in the relations between those persons and the administrative authorities. The same provision further states "the right of every person belonging to a national minority to be informed promptly, in a language which he or she understands, of the reasons for his or her arrest, and of the nature and cause of any accusation against him or her, and to defend himself or herself in this language, if necessary with the free assistance of an interpreter". The right to access to justice, in its declinations of the right to an effective remedy, fair trial and non-discrimination is also established in the CRC, Articles 3

[8] Azerbaijan acceded to the CRC on 13 August 1992.
[9] Azerbaijan acceded to the CEDAW on 10 July 1995.
[10] Azerbaijan ratified the CRPD on 28 January 2009.
[11] Azerbaijan ratified the Framework Convention for the Protection of National Minorities on 26 June 2000.
[12] Azerbaijan signed the European Charter for Regional or Minority Languages on 21 December 2001.
[13] Council of Europe Convention on preventing and combating violence against women and domestic violence, Istanbul, 11 May 2011

(best interests of the child), 12 (the right to be heard), and 40 (children and criminal law), and in the CEDAW, in Articles 2 and 15.

The monitoring bodies established in the context of these Conventions periodically highlight areas for improvement in the legislation or in the implementation practices. Examples include the need to address practices of involuntary confinement in psychiatric institutions of adults and children with intellectual and/or psychosocial disabilities; the recommendation to strengthen efforts to prevent and combat all forms of violence against women; the concern that cases of sexual violence and domestic violence in particular remain high, are often tolerated and are underreported because of a culture of silence; the recommendation to step up measures aimed at ensuring gender equality, etc.[14]

Although these obligations are part of the law in Azerbaijan, in the interviews conducted with judges in 4 courts in Azerbaijan, few examples were given of how these guarantees would apply in practice (more detailed information in the following sections).

Findings	Azerbaijan has ratified most of the main international and European instruments on the protection of the rights of vulnerable groups (women, children, persons with disabilities, minorities).
Recommendation 1	In ensuring the correct implementation of international obligations closer attention should be paid to systematic issues raised by the human rights monitoring bodies.

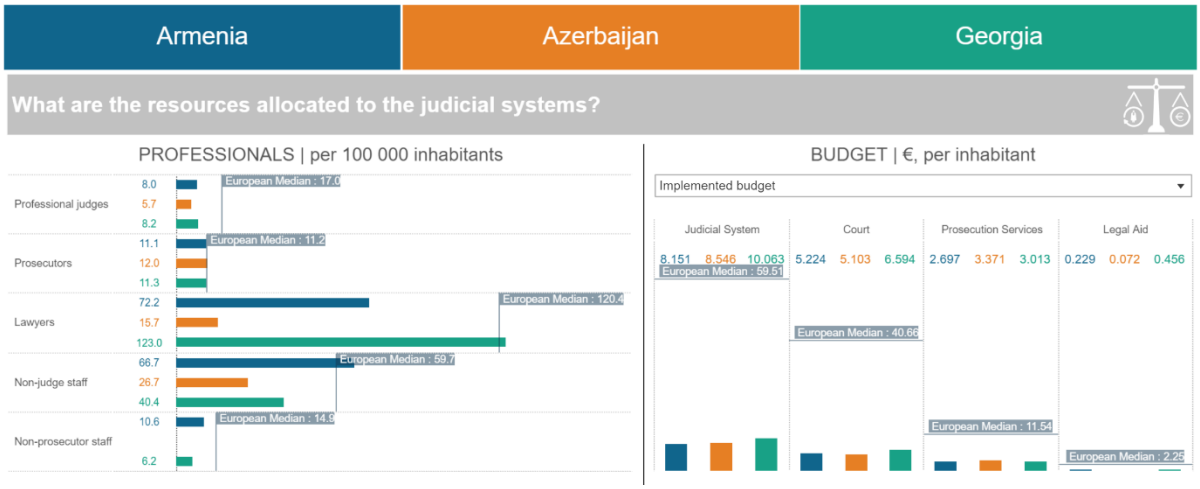
2.2. Budgetary and human resources of the judiciary

What is the level of budgetary and human resources allocated to the judiciary in Azerbaijan, compared to neighbouring countries and to the European median? The recently published CEPEJ Eval periodic report, which analyses data from 2018 shows that the budget for the judicial system in Azerbaijan as a percentage of the GDP is not high (0.205% compared to the European average of 0.32% and the European median of 0.28%). The report notes a general trend where the budget calculated as a percentage of GDP is relatively higher in the less wealthy countries, meaning that most of them are prioritising the judicial system relative to other public services. Azerbaijan, Armenia and Turkey are exceptions to this trend as their judicial system budget/GDP ratio is lower.[15]

[14] Comments, observations and recommendations from human rights bodies concerning Azerbaijan can be searched here: https://uhri.ohchr.org/en/search-human-rights-recommendations
[15] CEPEJ, evaluation of judicial systems, 2018-2020, p. 21, available at: https://rm.coe.int/evaluation-report-part-1-english/16809fc058

Compared to the neighbouring countries (Armenia and Georgia), Azerbaijan allocates similar overall budgetary resources to the judicial system but deploys a notably lower number - per capita - of professional judges (5.7 compared to 8 in Armenia and 8.2 in Georgia), lawyers (15.7 compared to 72.2 in Armenia and 123 in Georgia), and non-judge staff (26.7 compared to 66.7 in Armenia and 40 in Georgia). Also, the implemented budget for legal aid in 2018 was very low – 0.072€ per inhabitant compared to 0.229€ in Armenia and 0.456€ in Georgia. All these values are considerably lower than the respective European medians, as shown in the graph below. By contrast, the report found that despite the low court budget per capita, Azerbaijan allocated a relatively high level of resources on IT, compared to other CoE member states.[16]

Figure 1: Professionals and budgetary resources in Armenia, Azerbaijan and Georgia



Source: CEPEJ dashboard "Overview of judicial systems" 2020.

Findings	The budget for the judicial system in Azerbaijan as a percentage of the GDP is not high. Compared to the neighbouring countries and to European standards, Azerbaijan deploys a notably lower number of (per capita) professional, lawyers, and non-judge staff. Also, the implemented budget for legal aid in 2018 was rather low.
Recommendation 2	Insufficient financial and human resource allocations to justice institutions may create shortcomings in the effective functioning of the justice system and seriously affect access to justice. A thorough assessment of justice needs will help making a more

[16] Ibid. p. 96.

	accurate assessment of the resources that should be deployed in the justice system.

2.3. Legal framework and judicial statistics capturing access to courts of vulnerable groups in Azerbaijan

According to Article 87 of the Law on Courts and Judges "The courts of the Azerbaijan Republic shall draw up statistical reports at least once every six months". But to what extent are judicial statistics in Azerbaijan able to capture quantitative information on access to courts for vulnerable groups through disagregated data by age, gender, disbility or ethnicity?

Minors

The Criminal Code of the Republic of Azerbaijan (Article 84.1), defines minors as persons between the age of 14 and 18. A person who has reached age of 16 at the time of the commission of a crime shall be subjected to criminal liability; however this age is set at fourteen for a number of offenses (Article 20).

The information collected through desk based research,analysis of documentary sourses and interviews shows that judicial statistics are gathered on the number of juvenile convicts and are broken down by age groups – 14-16 and 16-18. There are no special tribunals dealing with cases involving minors; however, within the framework of a UNICEF project, two panels (three judges each) care currently reviewing cases involving juveniles in the Baku Court of Grave Crimes.

More generally, in both civil and criminal proceedings, information on age, gender, marital status, education, occupation, types of sentences imposed, previous convictions, etc. of the parties is also recorded. In civil proceedings, the rights, freedoms and legally protected interests of minors aged 14-18 are brought and/ot protected in court by their legal representatives, but the court may decide to involve minors in proceedings in person. Also, while general legal capacity begins at the age of 18, a 16-year-old minor can be declared fully capable (emancipation), and therefore would be entitled to exercise directly his or her rights and responsibilities in court. In some cases stipulated by legislation and related to civil, family, labor, administrative and other legal relationships or related to disposition of received wages or income from entrepreneurial activity, minors can personally protect their rights and interests.

Persons with physical and mental disabilities

Cases involving persons with disabilities are considered in the courts of general jusrisdicition, as there are no special tribunals for this purpose or speacilised divisions within the courts of general jurisdiction. Where persons with physical and mental disability lack capacity to bring

a legal claim, their rights, freedoms and interests shall be protected in court by their legal representative; however the court may decide on a case by case basis to involve them in the proceedings in person.

Data and statistics on persons with disabilities are collected at the national level for several purposes, for instance: the number of persons with disabilities receiving pensions or benefits; break down by age group and causes of disability of persons under and above 18 diagnosed with disability for the first time; social care institutions hosting people with disabilities. However, no judicial statistics are collected in relation to access to courts for persons with physical and mental disabilities involved in criminal or civil cases.

Persons belonging to minorities

Based on the 2009 population census, 91.6% of the population of Azerbaijan consisted of Azerbaijanis; other major ethnic grups were Armenians (1.35%), Lesgis (2.02%), Russians (1.34%), Talyshs (1.26%), etc.[17] Articles 44 and 45 of the Constitution recognize the right to national identity and use the native language, respectively. Under Article 127 of the Constitution, participants in court proceedings, who do not know the language of the proceedings, have the right to be acquainted with materials of proceedings, and take part in proceedings using an interpreter, and testify in the court in their native language.

Judicial statistics, however, are not currently able to capture overall access to court for members of ethnic minorities, whether in relation to cases currently being investigated, criminal convictions or civil law cases.

Domestic violence

There is no distinct criminal offence on domestic violence and the domestic context is not taken into account as an aggravating or mitigationg factor when a crime is committed. However, the 2010 Law on Prevention of Domestic Violence sets out measures to be taken along with criminal prosecution where a crime has occurred. Also, the Code of Civil Procedure provides for a special type of procedure for issuing a long-term protection order for a victim of domestic violence, which can be triggered by the victim or the relevant executive authority. The long-term protection order can be issued for a period of 30 to 180 days. In addition, the Code of Administrative Offenses regulates the violation of the requirements of the Law on Domestic Violence as an administrative offense. Pursuant to Article 158 of the same Code, actions aimed at the application of illegal restrictions of an economic nature on a domestic basis, i.e. deprivation of a person of property, income at his disposal, creating economic dependence, maintenance or abuse of such dependence by another person shall be

[17] https://www.stat.gov.az/source/demoqraphy/?lang=en

punishable by a fine. In addition, domestic violence, i.e., intentional mental pressure on another person or actions aimed at creating intolerable mental conditions, is also punishable by a fine.

Acoording to Article 18 of the Law on Prevention of Domestic Violence, a databank should be created by the relevant executive authority. The databank should store information on occurrence of cases of domestic violence, individuals who complained to state bodies about cases of domestic violence, examination and results of examination of cases of domestic violence, criminal and administrative offenders with regard to cases of domestic violence, court orders, including orders on termination and restriction of parental rights, as well as restoration and removal of restrictions of parental rights, information about accredited support centres and their activities, etc.

Table 2: Data on civil cases in the proceedings of the courts of first instance 2019

Cases	Filed	Disposed
On issuance of a long-term protection order to a victim of domestic violence	6	6
Deprivation of parental rights	347	268
Restriction of parental rights	28	24

Data is collected and statistics are compiled also on issuance of a long-term protection order and on Article 158 (Code of Administrative Offences) cases. However, the number of these cases is very low (6 cases filed on issuance of a long-term protection order to a victim of domestic violence in 2019, and no cases filed under Article 158).

Findings	In Azerbaijan, data is collected, and judicial statistics can be compiled, by age and gender but not by other characteristics, such as disability or ethnicity, migration status.
Recommendation 3	Judicial statistics are essential to judicial reform, in line with the motto: ‘If you can’t measure it, you can’t improve it’. A breakdown of judicial statistics by disability, ethnicity, migration status, in addition to age and gender, is also required in the framework of the Sustainable Development Goals (SDGs), where governments have committed to ‘leave no one behind’, including with regard to effective access to justice (SDG 16). Azerbaijan should step up its efforts to gather judicial data and

	produce statistics that can be disaggregated by age, gender, ethnicity, disability, nationality/migration status.

Chapter 3: Access to courts for vulnerable groups

3.1. Criminal justice

Legal assistance and representation: access to free legal aid

Availability of quality legal assistance. Legal representation is traditionally at the heart of access to courts and access to justice more broadly. Without it there are high risks that there will not be equality of arms between parties, trials will not be fair and/or legal rights will not be adequately protected or enforced. Availability of qualified lawyers is crucial. As shown by CEPEJ statistics (above Figure 1), Azerbaijan has a low number of lawyers per capita (15.7 per 100.000 inhabitants, compared to 72.2 in Armenia, 123 in Georgia, and 120.4 the European median).

The low number of lawyers has prompted measures aimed at triggering competition in performance, to increase quality legal assistance. In this regard, a Decree of the President of the Republic of Azerbaijan "On additional measures for the advancement of legal profession in the Republic of Azerbaijan" dated 22.02.2018, brought to the establishment by the Presidium of the Bar Association of a Legal Aid and Training Center, launched in December 2019. The Center aims to ensure the following: provide professional legal aid to citizens; organize the work of lawyers involved in the provision of legal aid at the expense of the state in accordance with the existing legislation; ensure timely payment of lawyers' fees fixed by the court decision; and involve lawyers in training to further increase their professionalism.

At the same time, lawyers have been incentivised to provide free legal aid (covered by the state budget). In May 2018, by Decision of the Cabinet of Ministers of the Republic of Azerbaijan, the amount of remuneration paid to a lawyer for the provision of legal aid for each working hour was increased three times and was set at 6 manats (approx. 3 Euro per hour). Nevertheless, this remuneration is very low compared to other countries.

Availability of free legal assistance and representation. Article 14 of the International Covenant on Civil and Political Rights (ICCPR) obliges states to provide free legal assistance in criminal proceedings for individuals who do not have sufficient means to pay for it. States are also encouraged to provide free legal aid in relation to civil matters for individuals in economic need.[18] This is important in many civil disputes, such as those on property, contracts and debt, labour exploitation and workplace discrimination, and in judicial review of governmental administrative decisions on immigration and asylum. These disputes have

[18] Human Rights Committee, General Comment No 32 on Article 14: Right to equality before courts and tribunals and to a fair trial, CCPR/C/ GC/32, 23 August 2007, para 10.

profound effects on the economic well-being of individuals, even more so for individuals belonging to vulnerable groups.

In Azerbaijan, Article 193 of the Code of Criminal Procedure sets out that free legal aid can be provided in criminal proceedings to persons who do not have sufficient funds for payment of lawyer services, upon decision by the judicial authority. The related costs of the defense counsel are borne by the state budget and as of January 2020 are paid by the Bar Association drawing from a specific fund for this purpose allocated in the 2020 state budget (5,519,250 AZN). This is in line with international obligations.

In many countries legal aid is inevitably limited owing to resources constraints. As shown above (Figure 1), Azerbaijan spends rather low sums on legal aid per capita, compared to neighbouring countries and other European countries. When economic conditions deteriorate governments may reduce even more the resources committed to legal assistance.

In Azerbaijan, the Code of Criminal Procedure (Art. 92) provides for circumstances of mandatory participation of a defense counsel, which include most cases involving vulnerable persons; in such instances the costs are also covered by the state budget. Examples include:

- if the suspect or the accused is dumb, blind, deaf, has other serious speech, hearing, or visual disabilities, or because of serious chronic illness, mental incapacity or other defects cannot exercise the right to defend himself independently;
- if during the criminal proceedings the mental illness of the suspect or the accused worsens or if a temporary mental disorder is diagnosed;
- if the suspect or the accused does not know the language used in court;
- if the suspect or the accused is under age at the time of committing the offence;
- if the suspect or the accused is forcibly detained in a special medical institution (psychiatric hospital);
- if the suspect or the accused lacks legal capacity.

The recent CEPEJ study shows (Table 2) that the number of free legal aid cases funded by the state increased considerably between 2012 and 2018. For lower income groups – especially minorities, indigenous peoples and persons living in rural areas – state funded legal aid is obviously crucial. Unfortunately, the figures below are not broken down by age, gender, disability status or ethnic minority membership.

	Total cases	Criminal brought to court	Other than criminal brought to court
2018	40,190	39,142	1,048
2016	29,202	26,827	2,375
2014	NA	NA	NA
2012	6,040	NA	NA

Table 2 Source: CEPEJ-STAT database

As resources committed to free legal assistance diminish, states must promote avenues and mechanisms capable of maximising the impact of the resources that are available. Some strategies identified in the UN Principles on Access to Legal Aid[19] include: promoting and sponsoring provision of legal aid services by paralegals and by other organisations; encouraging and supporting provision of legal aid services through university legal aid clinics; employing incentives for lawyers to work in economically and socially disadvantaged areas, such as tax exemption or travel and subsistence allowances; using funds recovered from criminal activities to cover legal aid for victims; promoting the growth of the legal profession, and removing financial barriers to legal education. Alongside these government-supported solutions individuals who do not qualify for legal aid are increasingly making use of low-cost schemes in the private sector.

One development, which is facilitating access to justice in Council of Europe states for those who are not granted legal aid, is the availability of private legal expense insurance. Individuals in 32 member states or entities, including Azerbaijan, are able to use a system of private insurance for costs concerning legal advice, legal assistance and representation in court proceedings. There is no equivalent available for instance in Armenia, Bulgaria, Croatia, Kazakhstan, Latvia, Malta, Republic of Moldova, Montenegro, Poland, Romania, Russian Federation, Serbia, Macedonia and Turkey.

Source: European Commission on the Efficiency of Justice (2018 report).

Beyond de jure legal aid. Despite rights to legal aid being available in law, information concerning its availability is not always provided officially, in a written form and/or in a manner that corresponds to the needs of the accused. The result is that there is no effective access to legal aid.

Geographical distribution of legal services has a more severe impact on people living in rural areas, and discriminatory laws affect the ability of these groups, and women in particular, to access legal aid. Interviews carried out and the information collected showed that the Bar Association in Azerbaijan regularly organizes missions to the regions to render free legal assistance to population with low income. Similar actions are held in Baku as well. Moreover, Free legal advice is also provided in ASAN centres (Azerbaijan Service and Assessment Network) and in the legal clinics of Baku State University (legal aid services provided by 3^{d} and 4th year students under the supervision of teachers) and the Academy of Justice (consultation to low-income citizens: pensioners, the disabled, refugees and IDPs, students).

[19] UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems ('UN Principles on Legal Aid'), adopted by unanimous consent by the UN General Assembly (Resolution A/RES/67/187) 20 December 2012, para. 8, available at: http://bit.ly/1NRQ0T0. That definition also follows the Lilongwe Declaration on Accessing Legal Aid in the Criminal Justice System in Africa and the Lilongwe Plan of Action (Official Records of the Economic and Social Council, 2007, Supplement No 10, (E/2007/30/Rev.1), chap. I, sect. B, draft resolution VI, annexes I and II).

A functioning legal aid system plays an important role in protecting and safeguarding the rights of victims. Access to legal aid should be guaranteed to both the accused and the victims of crime. This is broadly reflected in the UN Principles on Access to Legal Aid,[20] which establish that without prejudice to, or inconsistency with, the rights of the accused '[s]tates should provide legal aid to victims of crime, especially victims of serious crime and vulnerable victims, in the form of legal information on their rights and of legal representation.' In Azerbaijan, victims are not generally entitled to free legal representation, as such.

Research on best practices across jurisdictions identified a number of strategies that have been undertaken to improve access to legal aid for victims of violence.

In Poland, a programme is run by the Ministry of Justice in cooperation with the Polish legal profession called '[t]he week of legal aid for victims' where free legal advice is provided to those identifying themselves as victims of a crime. Initiatives of this kind are conducted by nongovernmental organisations and other organisations as well.

Source: IBA Report 2015, p. 31.

In Malawi a programme run by the Centre for Human Rights Education Advice and Assistance (CHREAA) is aimed at protecting sex workers from police abuses. Although prostitution is not a crime in Malawi, sex workers are exposed to persistent abuse and violence at the hands of the police and often face undue convictions and detention because of a lack of awareness of their rights. The programme includes human rights training for police officers and sex workers, a toll-free line for telephone assistance and advice, and advertising on local radio.

Source: IBA Report 2015, p. 31.

Findings	The number of lawyers (per capita) that operate in Azerbaijan is lower than in neighbouring countries and the European standards. Efforts have been made to increase the quality of legal assistance, also by providing incentives for lawyers to be engaged in providing free legal aid (covered by the state budget). Free legal aid is available in criminal cases and in the cassation instance in civil cases. The mandatory presence of a defence counsel (costs are covered by the state budget) is required in criminal cases involving vulnerable persons. The number of free legal aid cases covered by the state budget has progressively increased in the last years. Legal advice is also offered by paralegal schemes and NGOs.
Recommendation 4	Legal representation is at the heart of effective access to justice. Additional efforts are needed to ensure access to quality legal

[20] Above fn. 19.

	advice and representation in practice, in relation to both criminal and civil cases. In line with Recommendation 3, Azerbaijan should step up its efforts to gather judicial data and produce statistics that can be disaggregated by age, gender, ethnicity, disability, nationality/migration status, including in relation to free legal aid cases funded by the state budget.

Physical access to courts

Geographical distribution of courts. As earlier noted, the budget for the judicial system in Azerbaijan as a percentage of the GDP is not high. Adequate financial and human resource allocations to justice institutions are necessary to avoid shortcomings in the effective functioning of the justice system and ensure effective access to justice. The resources dedicated to justice systems may have an impact on the geographical distribution of justice institutions: an insufficient and unequal distribution will affect access to justice through limited physical accessibility of justice institutions. Access to justice barriers will be greater especially if transport is poor or unaffordable. These effects will be felt more acutely by people living in rural areas. Despite being discussed in the section on criminal justice, geographical distribution of courts is equally relevant in both criminal and civil cases.

In the most recent CEPEJ evaluation, Azerbaijan reported 86 first instance courts of general jurisdiction (i.e. 0.869 per 100.000 inhabitants), 7 commercial courts, 7 administrative courts, 6 military courts and 5 other specialised courts (i.e. the courts of grave crimes). Where courts have a special and exclusive jurisdiction over certain issues or crimes, remoteness problems may be exacerbated as those courts will inevitably be fewer in number.[21] For both general and specialist courts one way of delivering services to rural areas with poor transport is to use 'travelling' or 'mobile courts', especially (though not only) where disputes do not involve

Mobile courts have operated successfully in several countries:

• In **the Philippines**, the Justice on Wheels programme takes mobile courts outside urban areas to conduct brief trials, or to facilitate settlements by making 'the wheels of justice move faster'. Modified buses serve as mobile courts with two sections: a courtroom and a mediation room. The programme has resolved over 16,000 cases that were congesting domestic courts all over the country.

Source: Innovating Justice website.

• In remote rural areas in eastern **Democratic Republic of Congo**, mobile courts help victims of gender-based violence, who would otherwise not be able to travel to a court to obtain justice. These mobile courts have been established by local civil society groups and are officially recognised by Congolese law.

Source: ABA ROLI, 2012, p 24.

[21] American Bar Association Rule of Law Initiative (ABA ROLI), Access to Justice Assessment Tool: A Guide to Analysing Access to Justice for Civil Society Organizations (2012) (ABA ROLI), p 23.

complex legal issues. A second strategy for addressing geographical inaccessibility of formal court services is alternative (ADR) and/or informal dispute resolution. While widely used in some jurisdictions, such approaches are less familiar in others. A third strategy involves the use of technological tools allowing the parties to complete online several procedural steps, from download, compilation and submission of forms, to the upload of documents and other evidence, to online hearings. There are however limitations to the use of this solution, such as limited access to internet, computer literacy, data security, and limitations related to the types of cases that can be handled online while guaranteeing the procedural rights of the parties involved.

Physical barriers in court buildings and beyond. Physical barriers can impede many persons with disabilities from accessing justice at a courtroom, lawyer's office, police station or other relevant building. Moreover, quite often persons with disabilities are also excluded from key roles in the justice system as lawyers, judges or members of a jury. At a symbolic level, lack of physical accessibility (or segregated accommodations for persons with disabilities, for instance, a ramp at the back of a building) can make persons with disabilities feel excluded, and thus discourage them from pursuing justice. Disability advocates thus argue for universal design of physical spaces.

South Africa: The first discrimination disability suit before the Equality Court in South Africa was brought by a South African lawyer who was a wheelchair user. She complained under the Promotion of Equality and Prevention of Unfair Discrimination Act against the Justice Department and the Department of Public Works because of the inaccessibility of the courthouses. She had to be carried down a flight of stairs to enter the courthouse and, on another occasion, the Court had to postpone her cases because she could not get into the room.

The Court reached a final settlement in which the government admitted that it had failed to provide proper wheelchair access and that this was a form of unfair discrimination against the complainant and other people with similar accessibility needs.

Source: United Nations, Toolkit on Disability for Africa, p 11.

The non-discrimination provision at Article 5(3) of the CRPD requires that '[i]n order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided'. The CRPD (Article 2) clarifies the meaning of 'reasonable accommodation' as 'necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms'. In the context of access to justice for persons with disabilities (both physical and intellectual disability), it may be that a 'reasonable adjustment' could require a change of venue for court hearings for a disabled accused or victim. Similarly, visual or hearing impairment may also impede physical access and related adjustments will need to be introduced. Adjustments are crucial to guaranteeing access to justice in practice, but the scope of 'reasonable' adjustments based on disability grounds (e.g., building a ramp

for wheelchair users or changing a venue in specific cases) may vary considerably across jurisdictions.

The interviews conducted in courts in Azerbaijan highlighted that effective physical access to court can only be ensured in relatively new court buildings (interview at the Narimanov District Court). There were no measures at the court level (Sabail and Nasimi District Courts, and the Baku Appeal Court) to reduce physical barriers for persons with physical disabilities (e.g. wheelchair access; info point; brail indications in elevators etc.; enlarged print of documents for persons with visual impairment). It was reported that buildings are old, and that persons with physical disabilities would not show at the hearings but would rather be represented by their lawyer. Where courtrooms are situated in different floors (e.g. Baku Court of Appeal), and there is no elevator, cases involving persons with disabilities (e.g. wheelchair) should be notified in advance to plan the hearings on the lower floor; but this does not always happen.

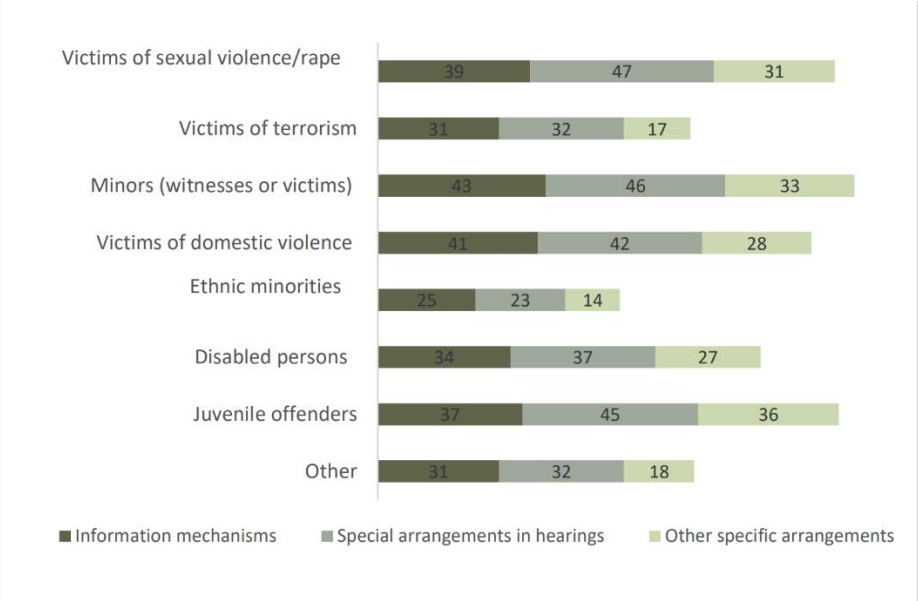
Findings	In Azerbaijan, the geographical distribution of courts of first instance is in line with the European median. In relation to special courts issues of effective access to justice may arise, especially because for the cases in the jurisdiction of those courts (commercial and administrative courts) no state free legal aid is foreseen (unless at the cassation stage). Physical access to court buildings for persons with physical disabilities represent a significant barrier to access to justice.
Recommendation 5	Azerbaijan should put in place measures and programmes inspired by international best practices, to ensure effective access to courts for persons in remote areas and physical access to court buildings for persons with a physical disability. Azerbaijan allocates important budgetary resources to the IT system and tools. As international practices show, such tools can be efficiently employed in cases within the jurisdiction of the special courts (commercial and administrative).

Due process and fair procedures

The impact of effective legal aid is maximised if this is provided in a system of sound justice institutions that operate on the basis of, and are respectful of, rule of law principles. Such a system would involve, among other things, adequate levels of qualifications of judges at all levels, including in lower courts.

Special arrangements for vulnerable persons. Special arrangements are necessary to ensure the effective participation of vulnerable groups in judicial criminal proceedings, whether as accused, victims or witnesses. Data gathered by the CoE through its most recent 2020 CEPEJ evaluation scheme, which covers information on 48 states or entities, illustrates the presence of special favourable measures that apply to specific categories of vulnerable persons during judicial proceedings. Figure 3 below offers an insight into whether and how often the specific needs of special vulnerable groups are taken into consideration during judicial proceedings in different European jurisdictions. Instead, Table 4 shows the responses to the same questions provided by Azerbaijan in the last evaluation cycle (2018 data).

Figure 3: Favourable arrangements applied during judicial proceedings



Source: CEPEJ report 2020

Table 4: Favourable arrangements applied during judicial proceedings in Azerbaijan

	Information mechanism	Special arrangements in hearings	Other specific arrangements
Victims of sexual violence/rape	y	y	y
Victims of terrorism	n	y	n
Minors (witnesses or victims)	y	y	y
Victims of domestic violence	y	y	y
Ethnic minorities	y	y	y
Disabled persons	y	y	y
Juvenile offenders	y	y	y

Other (e.g. victims of human trafficking, forced marriage, sexual mutilation)	n	n	n

Source: CEPEJ-STAT database

Figure 3 shows that a majority of jurisdictions have put in place special arrangements to address the challenges encountered by vulnerable groups. Special arrangements are more frequently found in court hearings, rather than in general information mechanisms or in other types of arrangements. According to the CEPEJ questionnaire, special arrangements in court hearings would include, for instance: the possibility for a minor to have their first declaration recorded; live audio or video-conferencing of the hearing of a vulnerable person so they are not obliged to appear before the accused; in camera hearing excluding the public; and the obligation (or the right to request) that statements of a vulnerable person (for example, a minor) are made in the presence of a probation counsellor or the like. Such in-court provisions are obviously important.

The law in Azerbaijan provides for several favourable arrangements, whether as information mechanisms, special arrangements in hearings or other specific arrangements (Table 4). Examples from the Criminal Procedure Code include: the prohibition of forced appearances in court or before the prosecuting authorities for children under the age of 14, pregnant women, or critically ill persons (Art. 178); conduct of criminal proceedings using the video conferencing system when the necessity arises to protect the best interests of a minor (Art. 51-2); non-disclosure of the identity of a minor suspect, accused or victim, except with their consent and that of their legal representatives (Art. 222); specific rules on proceedings concerning minors (Artt. 428-435); interrogation of an accused person or witness who is minor or with visual, hearing or speech impairments or suffering from other serious medical condition (Artt. 228, 229 and 233).

Figure 3 above also shows that in Europe special measures are applied more frequently with regard to minors, juvenile offenders, victims of domestic violence, sexual violence and rape, and disabled persons, as compared to ethnic minorities or other vulnerable groups, such as victims of human trafficking, forced marriage or sexual mutilation. Along this trend, a noteworthy development in Azerbaijan is the Decision of the Plenum of the Supreme Court of the Republic of Azerbaijan of June 30, 2008 on judicial practice in cases of juvenile delinquency, which aims to uniformize judicial practice in cases of crimes committed by minors, and to strengthen judicial protection of this group.

England and Wales: The Judicial College's Equal Treatment Bench Book provides a guide for judges, magistrates and all other judicial office holders. It includes a section on 'Mental disabilities, specific learning difficulties and mental capacity'. Practical measures to address and accommodate the needs of persons with mental and/or physical disabilities include:

• Place of trial: The need to arrange for evidence to be taken by depositions or for the trial to take place other than in a courtroom may be less evident as access is unlikely to be a problem, although the individual may be better able to give evidence in a familiar environment. A longer time estimate may be required because of the need to take evidence more slowly and with more breaks.

• Communication: A modified approach may be required when seeking to obtain reliable evidence from a person with mental health problems, especially those who are mentally frail, and the judge will wish to control any form of harassment by an over-zealous advocate. It is necessary to ascertain whether any communication difficulties are the result of mental impairment or caused by physical limitations that can be overcome by the use of physical aids or other techniques. An interpreter may be able to assist with strange or distorted speech.

• Facilities: The environment may be unsuitable to the individual for reasons that are not apparent (eg, certain kinds of lighting can affect those with epilepsy). Appropriate changes may then need to be made.

Source: Equal Treatment Bench Book, Chapter 7, www.bit.ly/2rskiJc.

Also, in line with the European trend, Azerbaijan has responded "no" to all three types of measures in relation to the "Other (victims of human trafficking, forced marriage, sexual mutilation)" category. The latter groups may be easily overlooked because they represent only a small faction within the society. However, the people who fall within those groups may be exceptionally vulnerable and in no less need of measures that will help overcome the barriers they face.

Specialised courts. Many jurisdictions use specialised courts in a particular area of the law. Examples include tribunals for minors, immigration courts, mental health tribunals or family violence chambers. Drug courts are another example, which originated in the US in the 1980s as a popular response to backlogs in courts and imprisonment rates and were thereafter established in other jurisdictions. The establishment of specialist courts is generally justified by the need for a particular type of judicial expertise and/or a particular adjudication procedure or to address politically or socially sensitive issues. Specialist courts may provide the necessary flexibility, higher levels of efficiency and sensitivity to the peculiar concerns of the accused or victims, but they may also involve additional costs and pose risks of fragmentation of the judicial system and duplication of services.

In New South Wales, Australia, despite dropping crime rates, the number of detention orders has increased, affecting mostly the poor, Indigenous Australians and those suffering from mental illness: more than half are imprisoned for drug and alcohol related crimes. The specialised Drug Court, with its unique emphasis on compulsory treatment and rehabilitation and with a dedicated team of counsellors, psychologists, health and legal professionals seeks to interrupt this pattern. The Court now sits at three locations and the programme has become a significant part of the criminal justice system in the State.

Source: Drug Court of NSW (2014).

England and Wales: A Mental Health Court (MHC) model was piloted at magistrates' courts in Stratford, East London and Brighton, Sussex in 2009. Criminal justice, health and third sector agencies jointly delivered the programme. A MoJ report evaluating the pilot courts noted key requirements of a MHC:

- a MHC Practitioner available daily at court;
- multi-agency agreements put in place prior to the MHC for information exchange;
- comprehensive screening and assessment of defendants for mental health issues;
- court involvement in the processes to review whether community orders are being implemented effectively;
- training and awareness events for practitioners and stakeholders; and
- identification of, and engagement with, local resources for signposting and referral of defendants to appropriate support services.

Source: Winstone and Pakes, Process Evaluation of the Mental Health Court Pilot, p iv.

As noted above, while there are no special tribunals dealing with cases involving minors in Azerbaijan, two panels (three judges each) care currently reviewing cases involving juveniles in the Baku Court of Grave Crimes, in the framework of a UNICEF project. Cases involving persons with disabilities, including mental disabilities, are considered in the courts of general jurisdiction.

Youth diversion programmes. Article 40, paragraph 3 of the UNCRC establishes that States Parties shall seek to promote measures for children allegedly responsible for criminal offences without resorting to judicial proceedings, whenever appropriate and desirable. Juvenile diversion strategies are conceived as substitutes for formal court processes with the goal of reducing contact and exposure to the formal juvenile justice system and, therefore, reducing recidivism. They are aimed at redirecting youth away from courts, while still holding them accountable for their actions and providing connections with supportive services. Diversion

strategies vary substantially and can go from warn-and-release programmes to treatment that is more serious, or therapeutic programming. Examples include restorative justice programmes (including victim–offender mediation or family group conferencing), community service orders, treatment or skills-building programmes (including cognitive behavioural therapy or employment training), family treatment, drug courts and youth courts.

The desk-based research and the interviews carried out for the purposes of this report showed no evidence of alternative mechanisms to judicial proceedings that incorporate child and gender sensitive safeguards.

Instead, as earlier noted, there are several safeguards embedded in the law which would apply during court proceedings and when serving sentence. In this latter regard, there are special penitentiary institutions - correctional institutions for juveniles in Azerbaijan, as requested by the CRC. These are divided into general and rigid regime institutions. Underage girls and underage boys sentenced to imprisonment for the first time, would serve their sentences in general regime correctional institutions. Underage boys who have previously served a term of imprisonment would serve their sentences in rigid regime correctional institutions.

Criminalization of violent conduct **(domestic violence).** Specific and more severe criminalisation and/or lack of criminalisation of certain types of violent conduct speak to social concerns at the level of government and society. Criminalisation sends a strong message that the behaviour in question is unacceptable. However, criminal law alone may not be sufficient to tackle the problem in practice. At the same time, an absence of legislation may be viewed as tacit approval of, or acquiescence in, intolerant behaviour, discriminatory practice and impunity.

Violence against women, including in the domestic context is an example where specific criminalisation may be considered. It provides a telling example of the advantages and limits of distinct criminalisation as a tool for addressing such practices. A study on access to justice conducted by the International Bar Association (IBA) showed that in a significant share of the jurisdictions surveyed, specific and more severe penalties were applied for crimes involving violence against women (24 of 39 responses) and violence in the domestic environment (21 of 39 responses).[22] Also, according to a World Bank study 127 countries out of 173 examined have laws on domestic violence, with 118 of those having introduced laws since 1990.[23]

[22] J Beqiraj and L McNamara, International Access to Justice: Legal Aid for the Accused and Redress for Victims of Violence (A Report by the Bingham Centre for the Rule of Law 2015/05), International Bar Association, October 2015, p. 19.
[23] World Bank, “Women, Business and the Law 2016” (World Bank 2015), 20-23.

As earlier noted, there is no specific criminal offence on domestic violence in Azerbaijan but the 2010 Law on the Prevention of Domestic Violence sets forth several measures to address the concerns of the victims, such as: provide an aggrieved person with immediate medical aid, temporary shelter in a support centre, clothing and food at public expense, as well as forward information about the aggrieved person to the relevant executive authority for conducting a course of psychological rehabilitation; clarify circumstances that have caused to provoke domestic violence, and take measures to preclude them; ensure registration with preventive purposes of persons who have committed domestic violence, and conduct educational and deterrent works with them; explain to family members suffering from domestic violence their rights and the use of remedies established by the state and determined by this Law; make a decision about issuance of a protective order.

The **Human Rights Committee** commented that **Azerbaijan** should strengthen its efforts to:

(a) Ensure the full criminalization of domestic violence, the explicit prohibition of sexual harassment and the effective implementation of relevant legislation in practice;

(b) Raise awareness of the unacceptability and adverse impact of violence against women, systematically informing women of their rights and establishing an effective mechanism to encourage the reporting of cases of domestic violence to the law enforcement authorities and to protect victims who come forward;

(c) Ensure that law enforcement officers, members of the judiciary, social workers and medical staff receive appropriate training on how to detect and deal properly with cases of violence against women;

(d) Ensure that all cases of violence against women are promptly and thoroughly investigated, that perpetrators are brought to justice and that victims have access to remedies and means of protection, including sufficient, safe and adequately funded centres for victims of violence;

(e) Prevent courts from resorting to reconciliatory measures in cases of sexual violence without due consideration for the victim's opinion and safety.

Source: CCPR/C/AZE/CO/4 (CCPR 2016)

However, criminal legislation as such is just one element of an effective response to the problem of domestic violence. Both perpetrators and victims of domestic violence often need more support than criminal prosecution can offer and this can be reflected in different ways in the justice mechanisms available - both criminal and civil – as well as in social, medical and educational services that go beyond legal solutions.

Persons with disabilities and children as witnesses and victims of crime. What is considered 'reliable' testimony often depends on clear memory and recollection, 'nonerratic' behaviour on the stand and consistent, straightforward communication of a narrative. Yet, persons with disabilities — particularly those with cognitive or mental disabilities — and children often receive and provide evidentiary information in a way that people without disabilities or adults respectively are not used to. There is, however, no reason to assume that such witnesses are not competent to give evidence. It is necessary to be aware of and accommodate these differences, to ensure that they can participate equally and effectively in testifying during a trial. Accommodations for equal participation in testifying may consist of: a friendlier environment in the courtroom, including the use of animals to accompany witnesses; the involvement of 'intermediaries',[24] speaking more slowly, where appropriate, allowing pauses for assimilation; framing questions in a way that assists recollection and the provision of more qualitative information, dealing with issues in chronological order and avoiding addressing new topics without explanation; and use of expert testimony that explains the meaning of a witness' words and conduct to the judge.[25]

United States: On 1 July 2017, House Bill 151 came into effect in the State of Florida. The Bill stipulates that 'the court may set any other conditions it finds just and appropriate when taking the testimony of… a person who has an intellectual disability… including the use of a therapy animal or facility dog… in any proceeding involving a sexual offense or child abuse, abandonment, or neglect'. A facility dog is trained, evaluated and certified, and provides 'unobtrusive emotional support' in facility settings. A therapy animal means an animal trained, evaluated and certified to provide animal therapy. These reflect some of the many different emotional supports that may make a courtroom an easier place in which to testify.

Source: Florida House of Representatives 2017 Legislature, www.bit.ly/2tsp1Hb.

England and Wales: The Youth Justice and Evidence Act 1999 authorises the use of 'special measures' to assist vulnerable witnesses. Special measures include 'pre-recorded cross-examination' and 'examination of witnesses through an intermediary'. A system of accreditation of Registered Intermediaries (RIs) by the Ministry of Justice is in place, but intermediaries outside the RIs scheme are also allowed to provide their services. Witnesses may be eligible for special measures because of their age, mental capacity, fear or distress. Witnesses with mental disabilities are eligible, although special measures are only available for such witnesses if the 'quality' of their evidence (as defined in section 16(5)) would be diminished by reason of the disability.

The scheme involving the use of intermediaries has also been employed in **Northern Ireland**, where it is statutorily guaranteed for both the accused and witnesses with a mental disability or other mental impairment. A pilot scheme targeted to children has been operating in **New South Wales** (Australia) since 2015.

In **Scotland**, RIs operate at the police level, but are not involved in judicial proceedings.

Source: Conference on Access to Justice for Vulnerable People, presentation by Michelle Mattison.

[24] Janine Benedet and Isabel Grant, 'Taking the Stand: Access to Justice for Witnesses with Mental Disabilities in Sexual Assault Cases', (2012) 50(1) Osgoode Hall Law Journal, 1–45, www.bit.ly/2sudRVn accessed 13 July 2017.

[25] Neta Ziv, 'Witnesses with Mental Disabilities: Accommodations and the Search for Truth', (2007) 27(4) Disability Studies Quarterly. See also Equal Treatment Bench Book, Section 7.

Findings	In Azerbaijan, special arrangements are set out in law aimed at ensuring effective participation of vulnerable groups in court proceedings. Special measures, however, are more frequently applied in relation to some groups, such as children and victims of violence.
Recommendation 6	Azerbaijan should strengthen the implementation in practice of the guarantees set out in the law - especially with regard to persons with physical and mental disabilities, members of ethnic minorities, migrants, victims of trafficking etc. - drawing from the examples in international practice involving measures at the governmental level, court level, NGO support etc.

Appropriate training for judges, prosecutors and administrative staff

A strong, independent and efficient judiciary requires judges, prosecutors and other administrative staff that continuously enrich their knowledge, maintain their skills and acquire new ones. This need is even more stringent today, where increasingly complex and sensitive issues arising in litigation processes require judges to adapt their knowledge to meet new challenges.

Continuous training for judges and staff in the criminal justice institutions that interact with victims and witnesses is strongly recommended in the UN Principles on Access to Legal Aid.[26]

In **England**, judicial office holders at the Mental Health Tribunal are required to undertake two days of training from an annual choice-based programme of events, covering a range of relevant topics.

Source: European Commission on the Efficiency of Justice (2014).

In the **US** in 2011 the state of Rhode Island established the Rhode Island State Victim Assistance Academy, aimed at providing training to individuals who work directly with victims and survivors of crime. Attendees include detectives, advocates for the homeless and for domestic violence victims, hospital interpreters, elder affairs workers and others within the public and private sectors. Sessions at the Academy cover topics such as: gay, lesbian and transgender issues, victims' rights, elder issues and victim compensation. The programme is the result of a partnership between the Family Service of Rhode Island and Roger Williams University.

Source: Family Service of Rhode Island (2011).

In **Kosovo**, a 2009-2013 UNDP/Netherlands-funded project 'Women's Safety and Security Initiative' aimed to enhance 'preventive and responsive services' across all sectors of activity relating to victim services (including justice, security, social welfare, health and education). The project supported the implementation of the legal framework on domestic violence; the establishment of the Domestic Violence Secretariat in the Ministry of Justice; and a civil society network, monitoring the government's implementation of the National Action Plan on Domestic Violence.

Source: UNDP in Kosovo (2013)

[26] Above fn. 19.

However, an IBA study of 2015 on access to justice found that less than one third of the respondents to the survey reported that training is mandatory in their jurisdiction (Austria, Australia, India, Japan, Malta, Nigeria, Sweden, UK, and the US). The survey and complementary research also identified a number of instances of training programmes organised by NGOs and other organisations, whether autonomously or in cooperation with government.

In Azerbaijan, training on topics regarding the rights and needs of vulnerable groups are part of university curricula and of the initial and continuous training of lawyers, judges and other public officials. A 60-hour Human Rights course on Juvenile Justice is taught in the Master's program as part of high education curriculum. Topics related mainly to childrren's rights and occasionally to the rights of persons with disabilities, victims of domestic violence and victims of trafficking are part of the initial and continuous training of judges, prosecutors and other public officials. Examples include:

- Topics on children's rights are included in the curriculum of candidate judges and lawyers, candidates for the prosecutor's office and the judiciary. Lectures on "Juvenile Justice" and "Implementation of the UN Convention on the Rights of the Child in the Republic of Azerbaijan in Legislation and Practice" are incorporated in the curriculum of initial training of candidate judges.
- In 2019, the program of the initial training course for candidate judges included a lecture on "Convention on the Rights of Persons with Disabilities".
- Lectures on "Peculiarities of Execution of Imprisonment for Prisoners Requiring Special Approach (Minors, Women, Disabled, Foreigners, and the Elderly)" were also incorporated into curricula of candidates who succeeded in the competition for employment in the judicial bodies, candidates and employees of the Medical Service and Forensic Examination Center of the Ministry of Justice of the Republic of Azerbaijan, middle management staff of the Penitentiary Service of the Republic of Azerbaijan involved in training at the Academy of Justice.
- Lectures on juvenile justice have been incorporated into curricula of compulsory training courses held at the Academy of Justice, including training of successful candidates in the recruitment competition for the judiciary, successful candidates for employment in the prosecutor's office, candidates for the Bar Association, middle management staff in the Penitentiary Service. Also, the Academy of Justice together with UNICEF held a two-day training on "Juvenile Justice" in 2017 for employees of the execution and probation departments.
- In 2018, UNICEF Azerbaijan conducted joint regional trainings on "Justice for Children" for judges, public prosecutors, probation officers, police officers and social workers of the

Academy of Justice of the Ministry of Justice of the Republic of Azerbaijan and the Police Academy of the Ministry of Internal Affairs of the Republic of Azerbaijan. The trainings took place in Ganja, Sheki and Lankaran.

- In June 2019, a training on “Improving the skills of the Probation Service of the Ministry of Justice on juvenile justice” was organized by UNICEF and the Academy of Justice for justice professionals. Subsequently, 5 participants who actively participated in the training were involved in a three-day Training of Trainers (TOT) program.
- Lectures such as “Women as Victims of Domestic Violence and Mechanisms for Punishing This Violence” was incorporated into curricula of candidates who have succeeded in the competition for employment in the judicial and prosecution bodies, candidates for membership to the Bar Association of the Republic of Azerbaijan, candidates and employees of the Medical Service and Forensic Examination Center of the Ministry of Justice of the Republic of Azerbaijan, middle management staff of the Penitentiary Service of the Republic of Azerbaijan involved in training at the Academy of Justice.
- The Academy of Justice together with the International Organization for Migration(IOM) has conducted various trainings, conferences and study tours within the project "Enhancement of the national capacity to combat human trafficking in Azerbaijan." “Collection of Judicial Precedents on Trafficking in Human Beings” and “Trafficking in Human Beings: Best Practice Guidance Manual for Investigators” has been developed and published within the project framework.

Findings	In Azerbaijan, training on topics regarding the rights and needs of vulnerable groups are part of university curricula and of the initial and continuous training of lawyers, judges and other public officials. These trainings organised by the Azerbaijani authorities or international programmes have resulted beneficial in raising awareness about the specific legal needs of vulnerable groups. Trainings have addressed mainly rights and guaranteed for children, and occasionally the rights of victims of domestic violence and persons with disabilities.
Recommendation 7	Further to Recommendation 6, training for judges, prosecutors and other judicial staff should put additional emphasis on topics covering the rights of all vulnerable groups, including the rights of victims of domestic violence, persons with physical and mental disabilities, members of ethnic minorities, migrants, victims of trafficking etc.

3.2. Civil and administrative justice

Legal assistance and representation and access to free legal aid

In civil and administrative law proceedings, a distinction can be drawn between mandatory participation of a lawyer and other circumstances. Mandatory participation of a lawyer is required in cassation cases and additional cassation appeals, as well as in applications for re-examination of judicial acts on newly established circumstances. In such cases (Article 67 of the Code of Civil Procedure), the parties who do not have sufficient funds to pay for the services of a lawyer may benefit from free legal aid. Accordingly, before first and second instance courts parties should recur to self-defence if they do not have the means to cover lawyer expenses. Self-defence is an option, but this may be denied, where by law the individual has limited or no legal capacity, as in the case of minors or persons with disabilities.

Institutionalisation and deprivation of liberty. Institutionalisation is the policy of segregating persons with disabilities into healthcare or residential institutions in order to provide concentrated support services. Features of an 'institution' include: depersonalisation, rigidity of routine, block treatment, social or geographical distance from the community and paternalistic arrangements. An institution is thus not necessarily determined by its size, but rather by the degree of autonomy available to residents to exercise control over day-to-day decisions.

Article 14 of the CRPD on liberty and security of the person stipulates that:

'States Parties shall ensure that persons with disabilities, on an equal basis with others:

(a) Enjoy the right to liberty and security of person;

(b) Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify a deprivation of liberty.'

Additionally, Article 19 of the CRPD codifies the right of persons with disabilities to choose where and with whom to live, contrary to institutionalisation policies. Thus, read together, these Articles constitute the legal framework regulating institutionalisation. It is clear that there must

be strong procedural safeguards against involuntary placement in an institution, as well as the possibility for judicial review of such placements, should they occur.[27] This is to prevent the stigma associated with segregated living and, more importantly, the exploitation that can and does occur in institutions.

Bulgaria: In *Stanev v Bulgaria*, the European Court of Human Rights (ECHR) found that the applicant's institutionalisation in a social care home for nine years constituted an unjustifiable deprivation of liberty, contrary to Article 5 of the ECHR. Factors leading to this decision included the institution's highly regimented schedule, conditional absences from the institutions and lack of autonomy over daily matters.

In the judgment, the ECHR also noted leading cases on this issue, and that: 'there was a deprivation of liberty in circumstances such as the following: (a) where the applicant, who had been declared legally incapable and admitted to a psychiatric hospital at his legal representative's request, had unsuccessfully attempted to leave the hospital (see *Shtukaturov v Russia*, no. 44009/05, § 108, ECHR 2008); (b) where the applicant had initially consented to her admission to a clinic but had subsequently attempted to escape (see *Storck v. Germany*, no. 61603/00, § 76, ECHR 2005-V); and (c) where the applicant was an adult incapable of giving his consent to admission to a psychiatric institution which, nonetheless, he had never attempted to leave (see *H.L. v. the United Kingdom*, no. 45508/99, §§ 89-94, ECHR 2004-IX).'

Source: *Stanev v Bulgaria*, 2012, para 118, www.bit.ly/2ttHu6b.

New Zealand: In response to a national inquiry into mental health services, in 1997, the New Zealand Ministry of Health established the 'Like Minds, Like Mine' project (formerly known as 'Like Minds'). It was one of the first comprehensive campaigns in the world to counter stigma and discrimination against people with mental illness, and continues to this day. There is clear collaboration between governmental and community institutions. The New Zealand government provides funding for the project, with the Ministry of Health holding strategic responsibility. The project specifically adopts a social model of disability (as opposed to a 'medical' model) and a human rights perspective, in line with the CRPD. 'Like Minds' has tracked public attitudes to mental health since its inception. From 2014 to 2019, its focus is workplace inclusion, guidelines for positive media portrayal of mental illness and promoting community solutions to discrimination and stigma. It is calculated that, for every $1 spent on the Like Minds campaign, there is an estimated $13.80 of economic benefit returned (increased access to employment, hours worked and increased use of primary care).

Source: Ministry of Health, Like Minds, Like Mine, national Plan 2014–2019.

In these regards, referring to the situation in Azerbaijan, the CRPD Committee has expressed "concerns about reports of involuntary confinement in psychiatric institutions of adults and children with intellectual and/or psychosocial disabilities and of the forced institutionalization of persons with a variety of disabilities, including children, without clear procedures for challenging such confinement and institutionalization and without proper judicial review. This, in practice, renders the prospect of release illusory."[28] The Committee has also noted the need for a specific law on the rights of persons with disabilities.[29]

[27] Committee on the Rights of Persons with Disabilities, Guidelines on article 14 of the Convention on the Rights of Persons with Disabilities: The right to liberty and security of persons with disabilities, September 2015, para 7, www.bit.ly/2rZCZTf accessed 13 July 2017.
[28] Committee on the Rights of Persons with Disabilities, CCPR/C/AZE/CO/4 (CCPR 2016), para. 12.
[29] Ibid, para. 10.

Involuntary medical treatment. Persons with disabilities who are committed to medical institutions are more likely to receive treatment they did not ask for. The UN Special Rapporteur on Torture has found that '[i]nside institutions, as well as in the context of forced outpatient treatment, psychiatric medication, including neuroleptics and other mind-altering drugs, may be administered to persons with mental disabilities without their free and informed consent or against their will, under coercion, or as a form of punishment'.[30]

Article 17 of the CRPD states that '[e]very person with disabilities has a right to respect for his or her physical and mental integrity on an equal basis with others'. Article 25 of the CRPD also stipulates that healthcare be provided on the basis of free and informed consent, without discrimination. The UN Committee on Economic, Social and Cultural Rights has stated (regarding the right to highest attainable standard of health): "[t]he right to health contains both freedoms and entitlements. The freedoms include the right to control one's health and body, including… the right to be free from interference, such as the right to be free from torture, non-consensual medical treatment and experimentation."[31]

Consequently, as the Special Rapporteur for the Rights of Persons with Disabilities has noted: "[i]t is clear that health is not an end in itself that can be pursued independent of the will of the individual, but enjoyment of the right to health requires respect for each individual's will and autonomy over their own physical and mental integrity. Any argument which permits supplanting individual consent on the basis of 'therapeutic purpose' or 'medical necessity' is in conflict with international human rights standards on the right to health.'[32] it appears that the approach to involuntary medical treatment in compliance with the CRPD is that involuntary treatment on the basis of disability should be prohibited.

Many countries must grapple with reforming their laws to align with the CRPD requirements on involuntary treatment, as current mental health laws tend to allow for involuntary medical treatment of persons with disabilities in particular circumstances.

A 2012 study showed that in the **European Union**, in 13 Member States, the risk of harm and the need for treatment are the two criteria listed alongside having a mental health problem that justify involuntary placement and treatment. This is the case in Denmark, Greece, Finland, France, Ireland, Latvia, Poland, Portugal, Romania, Slovakia, Slovenia, Sweden and the UK.

Source: European Union Agency for Fundamental Rights, Involuntary placement and involuntary treatment of persons with mental health problems, June 2012, p 16, www.bit.ly/1TWq65C.

Findings	As noted above, the number of lawyers (per capita) that operate in Azerbaijan is lower than in neighbouring countries and the

[30] Special Rapporteur of the Human Rights Council on Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Report, A/63/175, 28 July 2008, para 63.
[31] United Nations Committee on Economic, Social and Cultural Rights, General Comment No 14 on the right to the highest attainable standard of health (Article 12), E/C.12/2000/4, 11 August 2000, para 8.
[32] Council of Europe, Committee on Bioethics, Additional Protocol on the protection of the human rights and dignity of persons with mental disorders with regard to involuntary placement and involuntary treatment, Compilation of comments received during the public consultation, 9 December 2015, p 29, www.bit.ly/2s36rEE.

	European standards. Efforts have been made to increase the quality of legal assistance, also by providing incentives for lawyers to be engaged in providing free legal aid (covered by the state budget). In civil and administrative cases, free legal aid is available only at the cassation instance. Legal assistance and advice are also offered by paralegal schemes and NGOs.
Recommendation 8	Access to legal representation, whether free or at low cost, is rendered moot for persons with a variety of disabilities, including children, who are institutionalized without clear procedures for challenging confinement and without proper judicial review. Additional efforts are needed to ensure access to quality legal advice and representation in practice, in such cases. Examples from international practice include independent inquiries assessing the level of the problem and identifying possible solutions.

Due process and fair procedures

Legal capacity of persons with disabilities and supported decision making. The right to legal capacity for persons with disabilities is stated in Article 12 of the CRPD. As noted by the Committee on the Rights of Persons with Disabilities, which monitors implementation of the Convention by the States Parties, legal capacity comprises the ability to hold rights (legal standing) and to exercise those rights (legal agency).[33] Legal standing involves recognition as a legal person before the law — this includes having a birth certificate or being on the electoral role. Legal agency involves the capacity to enter, modify, or end legal relationships, and have the law support such actions. Examples of legal agency include buying and selling property or refusing medical treatment.

> Persons with disabilities 'remain the group whose legal capacity is most commonly denied in legal systems worldwide.'
>
> Source: Committee on the Rights of Persons with Disabilities, General Comment No 1, 2014.

[33] Committee on the Rights of Persons with Disabilities, General Comment No 1 on Equal recognition before the law (Article 12), 19 May 2014, para 13.

Legal capacity affirms and protects an individual's right to make decisions for themselves, free from intervention from others. The concept is essential to recognising an individual's personhood and autonomy.

Article 12 of the CRPD affirms that all persons with disabilities have full legal capacity. However, persons with disabilities, including those with physical, mental, intellectual or sensory impairments, are 'the group whose legal capacity is most often denied in legal systems across the globe'.[34] The restriction or denial of legal capacity for persons with disabilities can rest on different justifications. Analysis of state practice by the CRPD Committee reflects at least three approaches, but each raises problematic questions.[35]

Moldova: Persons that are declared incapacitated have no access to justice as they lack legal standing; only the person's guardian or the public prosecutor can bring a civil case to court on behalf of a person deprived of legal capacity if there is a public issue at stake.

Acting on a petition by the Office of the People's Advocate, on 13 November 2014, the Constitutional Court of the Republic of Moldova issued a decision by which it recognised the rights of persons declared 'incapacitated' to lodge complaints with the Office of the People's Advocate, and to request remedies when their decisions are not respected. However, the decision did not apply to national courts.

Source: Special Rapporteur on the Rights of Persons with Disabilities, Report on Moldova, 2016, para 54.

First, the 'status approach' equates disability with lack of legal capacity (i.e. the status of disability automatically strips an individual of legal capacity). Removal of legal capacity is the automatic consequence of the diagnosis of an impairment. Persons with cognitive or psychosocial disabilities are disproportionately affected by denial of legal capacity.[36] This view uses an erroneous understanding of disability and legal capacity as binary, zero-sum factors. In practice, there are graduated levels of ability and capacity, which can and should be bolstered with structural supports instead of automatic and completely substituted decision-making.

[34] Committee on the Rights of Persons with Disabilities, General Comment No 1 on Equal recognition before the law (Article 12), 19 May 2014, paras. 8 and 14.
[35] Ibid. para. 15
[36] Ibid. para. 9.

Second, the 'outcomes approach' grants or withholds legal capacity based on the 'reasonableness' of an individual's decision-making, rather than on a disability per se. For instance, an individual's decision to refuse medical treatment could be questioned as being against that individual's 'best interests' and thus result in a lack of legal capacity to make that decision. This approach applies a paternalistic double standard to persons with disabilities; that is, it penalises persons with disabilities for making mistakes or taking risks, while most people without disabilities would make those 'wrong' choices freely.

Last, the 'functional approach' accords legal capacity based on whether a person can appreciate the nature and consequences of their actions. This rests on a problematic conflation of legal capacity with mental capacity. Mental capacity reflects a person's decision-making skills, and in itself is scientifically difficult to assess.

Instead, the CRPD prohibits discriminatory (i.e. for the sole reason of disability) denial of legal capacity, and 'requires that support be provided in the exercise of legal capacity' where needed (art. 12). This model is referred to as

Canada (British Columbia): The 1996 Representation Agreement Act in British Columbia is a particularly successful manifestation of 'supported decision-making' principles (thanks to the considerable participation and inspiration from disability organisations).

Capacity is presumed for persons with mental illness and/or intellectual disabilities (section 3). Should a person foresee a loss of their capacity, they can enter into, amend and revoke a 'representation agreement' — this authorises a representative to help that person make decisions, or make decisions on behalf of that person, such as personal care or finances.

The Act allows for flexibility in assessing and understanding a spectrum of capabilities. For instance, a person can enter into representation agreements even if they are found to lack capacity under traditional contract law provisions, or cannot manage their healthcare or routine management of financial affairs (section 8). Furthermore, a person's method of 'communicating with others is not grounds for deciding that he or she is incapable of understanding anything' (section 3).

Source: Representation Agreement Act, British Columbia, handout, www.bit.ly/2so2S0e; Presentation by Christine Gordon, www.bit.ly/2sjp0rY.

Czechia: The new Czech Civil Code of 2014 abolished plenary guardianship and introduced a form of 'supported decision-making'.

People who foresee their legal incapacity are allowed to write advance directives, which outline a person's intentions regarding their finances and daily life. The scheme sets forth that the legal capacity of people with disabilities remains intact, and the contract between the support person and the person with disability needs to be approved by court.

Additionally, the new Civil Code allows for the institution of guardianship councils — three or more people meet at least once a year to monitor the activities of guardians. Though this institution is not mandatory, the guardianship council exemplifies a method to keep guardians under supervision, to better protect the capacity and will of the person with a disability.

Source: The Mental Disability Advocacy Centre, Report 2013, p 49.

'supported decision-making'.[37] It recognises that a person with disabilities should remain the primary decision-maker, and simultaneously acknowledges that improving support from multiple sources can bolster the autonomy of persons with disabilities. The CPRD Committee points out that 'support' is a broad term that encompasses informal and formal arrangements.[38]

Children's views in custody proceedings. The UNCRC provides that participation of children in civil and family law proceedings should be determined on a case-by-case basis, depending on age and maturity. Some jurisdictions establish by law the minimum age at which the child is deemed a young person of sufficient maturity and capable of expressing views which should be considered. In Azerbaijan, the Family Code (Art. 52) sets forth that the court or the guardianship and trusteeship authority may make a decision only with the consent of the child who has reached the age of 10; these authorities may also request and take into account the opinion of the child who has reached the age of 7 at the time of making a decision.

Despite the existence of legislation affirming the right of children to express their views in legal proceedings, implementation of such right in practice may be scarce.

A 2004 study on complex divorce cases **in Denmark** showed that only about 25 per cent of children were offered the possibility to express their views. Moreover, only 52 per cent of 7-11-year-olds gave an interview in practice. The reasons provided included the heavy caseload of social workers and, curiously, their 'lack of confidence' in interviewing children.

Source: O'Donnell, (2009).

In Estonia, in custody cases children of at least seven years of age could be heard by the court.

In Norway, children who have reached the age of seven and children under the age of seven who are able to form their own opinions shall be allowed to express their views before decisions affecting their personal situation are made. After the age of 12 the child's opinion shall be given considerable priority.

In Morocco, a child who has reached 15 years of age has the right to choose between their father and their mother as custodian.

In Hungary, (the CRC has noted with concern that) children below the age of 14 years do not have a right to be heard in decisions related to their custody, and in practice, children above that age are heard only as an exception, including in divorce and child custody cases

Source: IBA report 2016, p. 34.

Findings	The CRPD prohibits discriminatory (i.e. for the sole reason of disability) denial of legal capacity, and 'requires that support be provided in the exercise of legal capacity' where needed (art. 12). This model is referred to as 'supported decision-making'. The practices of involuntary confinement in psychiatric

[37] For a review of various supported decision-making models, see: Soumitra Pathare and Laura S Shieds, 'Supported Decision-Making for Persons with Mental Illness: A Review', (2012) (34)2 Public Health Reviews, www.bit.ly/2tVfZCX .

[38] J Beqiraj, L McNamara and V Wicks, Access to justice for persons with disabilities: From international principles to practice, International Bar Association, October 2017, p. 17.

	institutions of adults and children with intellectual and/or psychosocial disabilities and of the forced institutionalization of persons with a variety of disabilities, highlighted by the CRPD Committee, suggest that Azerbaijan is not fully compliant with the Convention in this regard.
Recommendation 9	Azerbaijan should strengthen the implementation in practice of the rights of vulnerable groups, especially the rights of persons with disabilities, and take steps to move away from a segregation model (in institutions) towards a participatory approach and a system of supported decision-making.

Chapter 4: Summary of recommendations

	RECOMMENDATIONS
1	In ensuring the correct implementation of international obligations, closer attention should be paid to systematic issues raised by the human rights monitoring bodies.
2	Insufficient financial and human resource allocations to justice institutions may create shortcomings in the effective functioning of the justice system and seriously affect access to justice. A thorough assessment of justice needs will help making a more accurate assessment of the resources that should be deployed in the justice system.
3	Judicial statistics are essential to judicial reform, in line with the motto: 'If you can't measure it, you can't improve it'. A breakdown of judicial statistics by disability, ethnicity, migration status, in addition to age and gender, is also required in the framework of the Sustainable Development Goals (SDGs), where governments have committed to 'leave no one behind', including with regard to effective access to justice (SDG 16). Azerbaijan should step up its efforts to gather judicial data and produce statistics that can be disaggregated by age, gender, ethnicity, disability, and nationality/migration status.
4	Legal representation is at the heart of effective access to justice. Additional efforts are needed to ensure access to quality legal advice and representation in practice, in relation to both criminal and civil cases. In line with Recommendation 3, Azerbaijan should step up its efforts to gather judicial data and produce statistics that can be disaggregated by age, gender, ethnicity, disability, and nationality/migration status, including in relation to free legal aid cases funded by the state budget.
5	Azerbaijan should put in place measures and programmes inspired by international best practices, to ensure effective access to courts for persons in remote areas and physical access to court buildings for persons with a physical disability. Azerbaijan allocates important budgetary resources to the IT system and tools. As international practices show, such tools can be efficiently employed in cases within the jurisdiction of the special courts (commercial and administrative).
6	Azerbaijan should strengthen the implementation in practice of the guarantees set out in the law - especially with regard to persons with physical and mental disabilities, members of ethnic minorities, migrants, victims of trafficking etc. - drawing from the examples in international practice involving measures at the governmental level, court level, NGO support etc.

7	Further to Recommendation 6, training for judges, prosecutors and other judicial staff should put additional emphasis on topics covering the rights all vulnerable groups, including the rights of victims of domestic violence, persons with physical and mental disabilities, members of ethnic minorities, migrants, victims of trafficking etc.
8	Access to legal representation, whether free or at low cost, is rendered moot for persons with a variety of disabilities, including children, who are institutionalized without clear procedures for challenging confinement and without proper judicial review. Additional efforts are needed to ensure access to quality legal advice and representation in practice, in such cases. Examples from international practice include independent inquiries assessing the level of the problem and identifying possible solutions.
9	Azerbaijan should strengthen the implementation in practice of the rights of vulnerable groups, especially the rights of persons with disabilities, and take steps to move away from a segregation model (in institutions) towards a participatory approach and a system of supported decision-making.

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