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VALIDITY



FORUM
Human Rights



MENTAL
HEALTH
PERSPECTIVES



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EXECUTIVE SUMMARY

Main Objective of the Study

The objective of this national informational document is to facilitate an assessment of access to justice for children with disabilities victims in Portugal. One of the fundamental principles of the Portuguese legal system is the principle of equality, which is consistently emphasised in international instruments. However, in the context, this principle is not fully realised, and numerous barriers hinder child victims with disabilities from effectively exercising their rights. These obstacles include the absence of specific legislation providing for adequate measures, inadequate physical access to courts and other facilities, as well as the lack of accessible transportation for children to travel to places, insufficient training of professionals who interact with children with disabilities, and the lack of accessible information and resources for children with disabilities. There are also restrictions on exercising legal capacity and barriers to accessing legal assistance and representation.

As child victims with disabilities are particularly vulnerable individuals, their rights assume heightened importance, and they should be entitled to additional rights to ensure equality with others. The complexity of the justice system, children's unfamiliarity with it and the impact of trauma should be addressed by justice professionals and stakeholders to ensure that all children with disabilities have access to justice and can participate in their own cases in a meaningful way, as full-fledged individuals capable of advocating for their rights either independently or through a representative. Only in this way it will be possible to achieve a fairer and more inclusive justice system.

Therefore, this national informational document seeks to enable an assessment in Portugal of:

- The barriers faced by child victims with disabilities, particularly those with intellectual and/or psychosocial disabilities, in accessing information, support, and procedural adaptations within the criminal justice system.
- The extent to which legislation, policies, and/or practices exist to address and overcome these barriers.

Recommendations

The following recommendations are made for future work:

- Prioritise access to justice for child victims with disabilities on the national agenda; and the implementation of procedural adaptations for various types of disabilities.

- Develop comprehensive training programs on the rights of child victims with disabilities for justice professionals.
 - Create a manual of good practices for criminal police officers, judicial authorities, prosecutors and judges, with simple, accessible and understandable language throughout the judicial process, including appropriate formats (Braille, easy read).
 - Encourage the participation of child victims with disabilities (and relevant institutions) in improving the judicial system.
 - Improve the accessibility of websites.
 - Establish adequate support services (multidisciplinary teams) in the criminal justice system to ensure procedural adaptations and accessible justice.
 - Promote training for magistrates and lawyers on the rights of child victims with disabilities.
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01

INTRODUCTION

When analyzing the “state of the art” of access to justice for children with disabilities, it is essential to outline the elements covered by this concept. This enables a full assessment of the policies, practices and resources available to ensure the inclusion and adequate protection of these children in the justice system. In addition to considering the physical and communicative barriers that may restrict access, it is essential to address the legal and social aspects that affect the effectiveness of justice for this vulnerable group.

Disability, according to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), is an evolving concept that arises from the interaction between people with disabilities and the attitudinal and environmental barriers that prevent their full and equitable participation in society. The citizen with disabilities in Portugal is increasingly seen as an active and participating member of society, with equal rights and a valuable contribution to make. However, despite legal and political progress, and recognition of the importance of including people with disabilities, there is still a long way to go for them to have the same rights and opportunities as other citizens in Portugal, requiring an effort to change policies, legislation, but also society's mentalities (Fontes et al., 2023).

One of the major ways to overcome these barriers is through the implementation of procedural adaptations that enable children to exercise their rights and participate in the process. About this, the United Nations’ “**International Principles and Guidelines on Access to Justice for Persons with Disabilities**” (2020) define procedural adaptations as necessary and appropriate modifications and adaptations in the context of access to justice, made when required in a specific case, to ensure that people with disabilities can participate on equal terms with others.

Also, this document enlightens the relevant principles that should be present when analyzing the access to justice for people with disabilities, including child victims. **Principle 1** affirms that all people with disabilities have legal capacity and therefore must not be denied access to justice based on their disability. **Principle 3** states that persons with disabilities, including children, have the right to appropriate procedural adaptations. **Principle 4** affirms that people with disabilities have the right to access legal notices and information in a timely and accessible manner, on an equal basis with others. **Principle 5** emphasises that persons with disabilities possess the right to all substantive and procedural safeguards recognised by international law, on an equal basis with other people, and States must provide the necessary adaptations to guarantee a fair process. **Principle 6** assures that persons with disabilities have the right to free or affordable legal assistance. Finally, Principle 10 mandates that everyone working in the judicial system must have awareness-raising and training programs on the rights of people with disabilities, especially in the context of access to justice.

Having in mind these principles, thus it's important to assess how the different laws and regulations worldwide, as well as the national ones, address the relation of disability, human rights, and participation, foreseeing the goal of ensuring the aimed

equality for child victims with disabilities regarding their participation in criminal proceedings.

Effective communication is a crucial aspect of personal development, learning, social participation, and relationship building for everyone. Nevertheless, children with intellectual or psychosocial disabilities face significant communication barriers that prevent them from accessing justice. This issue is often ignored, but it is essential to ensure that children with disabilities are treated fairly and have equal opportunities to exercise their rights.

The **general objective** of this investigation is to **collect information** on the topic of access to justice for child victims with disabilities, through **documentary research and interviews**, so that it is **possible to identify the main barriers to access to justice**, thus providing information on how to improve adaptations, procedures and abolish the barriers that still exist. Therefore, it will be possible to eventually implement new measures that allow children to make procedural adaptations adapted to their age and needs, ensuring that they truly participate in the process.

Although Portuguese legislation is aligned with the **UN Convention on the Rights of Persons with Disabilities (UNCPRD)**¹, social perception is still moving towards a model based on rights and inclusion. Disability is still often viewed through a medicalised and welfare lens, creating obstacles in the recognition of the rights and procedural capacities of children with disabilities, hindering their effective participation in the justice system, and preventing them from exercising their rights and having a voice in the processes that directly affect them. Thus, this document can be a crucial resource, by analyzing the existing measures and their practical implementation. Hopefully, in the end, it will be possible to suggest new measures and changes that will positively impact the lives of children with disabilities when participating in criminal proceedings.

¹ Adopted, 2006 (resolution A/RES/61/106. In Portugal it was approved by Resolution of the Assembly of the Republic no. 56/2009, of 30/07, and ratified by Decree of the President of the Republic no. 10/2009, of 30/07, and ratified by Decree of the President of the Republic no. 10/2009, of 30/07, of 30/07 and ratified by Decree of the President of the Republic no. 71/2009, of 30. /07.71/2009, 30/07.

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OBJECTIVES AND METHODOLOGY

To achieve these objectives, the methodological approach combined documentary research and fieldwork.

The documentary research involved the identification and analysis of the **Convention on the Rights of Persons with Disabilities (UNCRPD)**², the **Charter of Fundamental Rights of the European Union**³ and the **Constitution of Portuguese Republic**, **International Principles of Access to Justice for Persons with Disabilities**⁴, the **Charter of Fundamental Rights of the European Union**⁵, the **European Convention on the Exercise of Children's Rights**⁶, **Directive 2012/29/EU**⁷, **Directive 2011/93/EU**⁸, the **Convention on the Rights of Children**⁹, the **Convention on the Elimination of All Forms of Discrimination against Women**¹⁰, of the **Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse**¹¹, **Portuguese Code of Criminal Procedure** and the **Victim Statute**¹² relating to the system for providing reasonable and procedural accommodations in the criminal justice system for children with disabilities.

The legal instruments mentioned, such as the Convention on the Rights of Persons with Disabilities (UNCRPD), the Charter of Fundamental Rights of the European Union, and the Constitution of the Portuguese Republic, establish the framework for safeguarding the rights and protections of individuals with disabilities and other vulnerable populations. However, academic research reveals areas where these legal frameworks may have limitations or encounter implementation challenges. For example, studies conducted by Pereira and Santos (2020) have pinpointed deficiencies in access to justice for persons with disabilities in Portugal, highlighting obstacles related to physical accessibility, legal knowledge, and procedural adjustments. Additionally, research by Sousa and Ferreira (2018) has investigated the

² Adopted on December 13, 2006 (resolution A/RES/61/106. In Portugal it was approved by Resolution of the Assembly of the Republic no. 56/2009, of 30/07 and ratified by Decree of the President of the Republic no. 71 /2009, 30/07.

³ Formally adopted in Nice, in December 2000, by the European Parliament, the Council of the European Union and the Commission.

⁴ On 21 February 2020, the Special Rapporteur agreed to another Expert Group Meeting in Geneva with the purpose to discuss and validate the International Principles and Guidelines on Access to Justice for Persons with Disabilities.

⁵ Formally adopted in Nice, in December 2000, by the European Parliament, the Council of the European Union and the Commission.

⁶ In force in the international order since July 1, 2000, and was approved by Resolution of the Assembly of the Republic no. 7/2014, of 27/01 and ratified by Decree of the President of the Republic no. 3/2014, of 27/ 01.

⁷ Issued by the European Parliament and the Council on October 25, 2012.

⁸ Issued by the European Parliament and the Council on December 13, 2011.

⁹ Adopted by the United Nations General Assembly on November 20, 1989, and ratified by Portugal on September 21, 1990

¹⁰ Adopted by the UN General Assembly on December 18, 1979.

¹¹ Completed in Lanzarote, on October 25, 2007, and, in Portugal, approved by Resolution of the Assembly of the Republic no. 75/2012, of 28/05; ratified by Decree of the President of the Republic no. 90/2012, of 28/05.

¹² Law no. 130/2015, of 4 September, which transposed Directive 2012/29/EU of the European Parliament and of the Council, of 25 October 2012.

intersectionality of gender and disability within the context of discrimination, emphasizing the necessity for a more holistic approach to addressing various forms of marginalisation. By incorporating insights from these scholarly investigations, policymakers and stakeholders can gain deeper insights into the intricacies of ensuring equitable justice for all individuals and identify avenues for enhancement.

The fieldwork involved semi-structured interviews with various professionals involved in the court system and child protection. In total, 10 interviews have been included in this research:

- 1 lawyer- Lawyer with 32 years of experience who has had contact with the Human Rights Commissions (labeled as E1)
- 2 victim support workers from APAV- one of them works in the Department of Investigation and Criminal Action (labeled as E4) and another is a victim support officer in one of the APAV's Victim Support Offices. (labeled as E2)
- 2 judges- one is retired judge (labeled as E3) [AÖ1] and the other one is a criminal investigating judge (labeled as E9)
- 4 Police inspector- All of them work in they all work in the department of sexual crimes against children. One of them is a senior inspector (labeled as E5) and the others are inspectors (labeled E6; E7; E8)
- 1 public prosecutor- The interviewer has been working more on the research phase than on the actual trial, the statements and diligences for future memories (labeled E10)

The completed interviews were conducted from December 2023 to January 2024 and were analyzed using content analysis. In chapters three, four, and five a combination of the main findings of the desk research and fieldwork will be presented.

03

LEGISLATIVE AND
POLICY FRAMEWORK
FOR SUPPORT,
ACCESSIBILITY, AND
MULTIDISCIPLINARY
COOPERATION

01 Legislative and Political Framework

Analyzing the international legal instruments on the participation of people with disabilities, especially children, in legal proceedings is fundamental. These instruments serve as a starting point for action at national level and establish guidelines for guaranteeing effective access to justice for children with disabilities.

We will examine the provisions of the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), the Charter of Fundamental Rights of the European Union, the European Convention on the Exercise of Children's Rights, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention) and Directive 2012/29/EU (Victims' Directive). In addition, in order to better understand the situation in Portugal, it is important to analyze the country's relevant periodic reports to the United Nations Committee on the Rights of the Child, with a focus on the concluding observations related to children with disabilities who are victims of crime, as well as strategies and policies for protecting children at risk.

Despite the scenario showing a positive evolution, with media reports that there are now more children with intellectual disabilities attending schools, new programs to support inclusion, and investments in the development of assistive technologies; based on the news of October 22, 2023, shared by the SIC Notícias website, in the context of the report carried out by FENACERCI (2023), people with intellectual disabilities, including children, are discriminated against in access to justice in Portugal.

Additionally, in a CNN Portugal report (2023), federations that support children with intellectual disabilities, cerebral palsy and autism, reported on the government's insufficient support for inclusive education this school year, and the difficulty in providing an adequate response to school-age children. In a study also related to inclusive schools, it was reported that a quarter of the 502 students surveyed reported cases of discrimination and mistreatment of students with disabilities (CIES, 2023).

United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

The Convention on the Rights of Persons with Disabilities was adopted on December 13, 2006. Portugal ratified the convention, and its additional protocol, without reservations, in 2009.

The goal of this document, which entered into force on 3 May 2008, is “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”.

Article 12 of the UNCRPD states that “persons with disabilities have the right to recognition everywhere as persons before the law” and that States Parties shall adopt

appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity.

Article 13 of the UNCRPD indicates that States Parties must ensure that **persons with disabilities have equal access to justice**, which includes providing **appropriate accommodations for their age and needs**, so that these persons can participate directly or indirectly in all legal proceedings, including as witnesses, in all legal proceedings.

Regarding children, Article 7 of the Convention requires States Parties to take all **necessary measures to ensure that children with disabilities have the same rights and freedoms as other children, including to express their views on all matters affecting them.**

Convention on the Rights of the Child

Although the Convention on the Rights of the Child (UNICEF, 2019) addresses children's rights in general, it recognises and protects the specific rights of children with disabilities. Articles potentially associated with children with disabilities include: **Article 2** - Non-discrimination, which establishes the principle of non-discrimination, ensuring that all children, including those with disabilities, have the right to equal treatment and opportunities; **Article 23** - Children with Disabilities, which advocates the right of children with disabilities to special care and the right to enjoy a full and decent life in conditions that ensure dignity, promote autonomy and facilitate active participation in the community; **Article 24** - Health and Health Services: which highlights the right of children with disabilities to the highest attainable standard of health and to the health services necessary to achieve that standard, including specific rehabilitation and support services; o **Article 28** - Education, establishing the right of children with disabilities to education, based on equal opportunities, promoting the development of the child's personality, abilities and talents, taking into account their special needs, and **Article 29** - Aims of Education, which states that the education of children with disabilities should be aimed at the full development of their potential, taking into account their individual abilities, needs and interests.

Charter of Fundamental Rights of the European Union

The Charter of Fundamental Rights of the European Union encompasses the personal freedoms and rights enjoyed by citizens of the EU. Despite it being declared in 2000, it only came into force in December 2009 along with the Treaty of Lisbon.

The following articles of the Charter of Fundamental Rights of the European Union are relevant and should be taken into account: **Article 20**, which establishes the principle of equality before the law; **Article 21**, which prohibits all forms of discrimination; **Article 24**, which enshrines the rights of the child; **Article 26**, which addresses the integration of persons with disabilities; and **Article 47**, which guarantees the right to a fair trial and an impartial tribunal.

European Convention on the Exercise of Children's Rights

The **European Convention on the Exercise of Children's Rights** was signed on January 25, 1996 and entered into force in Italy on November 1, 2003. This document establishes crucial measures to protect children, and the most notable articles for examination include **Article 3**, which grants children the right to be informed and express their opinions within the scope of legal proceedings, **Article 4**, which permits children to request the appointment of a special representative, **Article 5**, which guarantees other possible procedural rights, **Article 7**, which imposes a duty to act without unnecessary delay, and **Article 9**, which provides for the appointment of a representative.

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Convention)

The **Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse**, also known as the Lanzarote Convention, from 2007, is an important agreement regarding the standards on children rights when facing a situation of sexual violence and/or sexual exploitation.

These standards include **Article 14**, regarding the assistance to victims; **Article 30**, about the principles on the investigation, prosecution and procedural law; **Article 31**, regarding general protection measures; and **Article 35**, about child hearing.

Directive 2012/29/EU

This document, of the European Parliament and of the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, is also known as "Victims' Directive".

The **Article 3** states that "communications with victims are given in simple and accessible language, orally or in writing", and that these communications should be tailored to the personal characteristics of the victim including any disability which may affect the ability to understand or to be understood.

The **Article 22**, about the individual assessment of victims to identify specific protection needs, defines that victims with disabilities shall be duly considered into this assessment. Also, it's stated that children should always be presumed to have specific protection needs due to their vulnerability to secondary and repeat victimisation, to intimidation and to retaliation.

In **Article 23** it's determined which can be the protection measures that can be put into practice to victims in need of specific protection, as described in the article 22.

The **Article 24** defines the specific protective measures to child victims during criminal proceedings.

02 Intersectionality in the national legal framework

According to **Article 1 of the Convention on the Rights of the Child**, “a child is any human being under the age of 18, unless, under the terms of the law applicable to them, they reach the age of majority earlier”. As a child has a legal personality, they may be involved in legal proceedings, and it is necessary to know to what extent they can effectively participate in the process.

In Portugal, individuals under the age of 18 are considered as **children**. Therefore, they must not be subjected to discrimination nor have their rights suppressed due to their age.

According to Article 66 of the Portuguese Civil Code (CC), legal personality is conferred upon individuals at birth; however, not all individuals possess legal capacity, including children. **Legal capacity**, in this context, refers to the aptitude to act legally, exercising rights or fulfilling obligations, either autonomously or through appointed representatives. Therefore, **while children possess legal personality, they cannot independently exercise their rights, necessitating parental responsibility to act on their behalf**. In our research, no specific documents or news items relating to age discrimination against children with disabilities were identified.

Constitution of the Portuguese Republic (CRP)

This is the document that settles all the Fundamental Rights that guide different aspects of life in Portugal. Despite it's from 1976, with the last change in 2005, it contains some basic principles that are also present in the international legal documents previously addressed.

Namely, the CRP defines that all citizens have the same social dignity and are equal before the law (**Article 13**); therefore, they can exercise all the rights that CRP defines and also have the same duties. If a citizen is a victim of crime, they have the right to participate in the criminal proceedings (**Article 32**).

Legal Regime for the Prevention, Qualification, Rehabilitation, and Participation of People with Disabilities (National Law 38/2004)

This document establishes the **general basis for the Legal Regime for the Prevention, Qualification, Rehabilitation, and Participation of People with Disabilities**. Despite no mention to criminal proceedings is made, it's important to highlight that the Article 43 defines that Governmental, Public and Private Entities should provide to persons with disabilities, information about services, resources and

benefits that are entitled to them – namely in braille, enlarged characters, audio, sign language, or appropriate computer record. According to specialists, a translator is provided when needed. The inclusion of AAC devices is not specifically mentioned.

National Strategy for the Inclusion of People with Disabilities 2021-2025

Following the ratification of the UNCRPD by Portuguese Government, Resolution of the Council of Ministers No. 97/2010, approved the **National Strategy on Disability (ENDEF) for 2011-2013**¹³. An interdepartmental group was established, responsible for monitoring the implementation and adequacy of the 133 measures contained therein, their objectives and indicators as well as the main responsible entities. More recently, **Resolution of the Council of Ministers No. 119/2021**¹⁴, approved the National Strategy for the Inclusion of People with Disabilities 2021-2025.

This National Strategy doesn't directly address the participation of persons with disabilities in justice; however, it proposes the revision of the National Law 38/2004 of August 18th and has also a goal of preventing the violence against persons with disabilities and qualifying the intervention with them. According to this law, which defines the general bases of the legal regime for the prevention, habilitation, rehabilitation and participation of people with disabilities, people with disabilities have the right to be informed and enlightened about their rights and duties, including the right and duty to participate in the planning, development and monitoring of the policy for the prevention, habilitation, rehabilitation and participation of people with disabilities.

National Law 130/2015 ("Victim Statute")

The Directive 2012/29/EU was transposed to Portuguese law through the National Law 130/2015. This law has made some changes to the Code of Criminal Procedure and approved the existence of a "Victim Statute", which defines rights that should be guaranteed to all victims, including child victims – and will be further detailed.

National Strategy for the Rights of Victims of Crime (2024-2028)

On January 5, 2024, Council of Ministers Resolution No. 2/2024 published the first National Strategy for the Rights of Victims of Crime (ENDVC) for the next four years (2024-2028), compiling and strengthening victims' rights. With six strategic axes: (i) creating a culture of prevention; (ii) debureaucratisation the mechanisms for victims'

¹³ Available at: <https://www.inr.pt/documents/11309/284924/ENIPD.pdf/5bce7969-0918-4013-b95d-2a5a35a870c5>

¹⁴ Available at: <https://files.diariodarepublica.pt/1s/2021/08/16900/0000300071.pdf>

participation in justice; (ii) strengthening support structures and services; (iv) increasing victims' influence in criminal proceedings; (v) developing an organisational culture of empathy for victims; and (vi) carrying out a comprehensive study to get to know the reality of this social phenomenon, aims to empower victims in criminal proceedings, regardless of whether they are an assistant; guarantee national coverage of a network of victim support services; create a reparation fund for victims, resulting from the partial allocation of fines paid as a result of convictions in criminal proceedings; and encourage the use of restorative justice processes.

Despite its general nature, this strategy reinforces measures aimed at particularly vulnerable victims, which could include children with disabilities.

Lei 147/99

Effective from September 1, 1999, Law 147/99 is constantly being amended, keeping pace with social changes and new challenges. With a focus on promoting the rights and protection of children and young people in danger; guaranteeing their well-being and integral development; and preventing situations of danger and promoting family and social reintegration, including children with disabilities, it presents measures for the promotion and protection of children and young people, as well as their rights, and the competencies of the Child and Youth Protection Commissions, Juvenile Courts and child and youth support entities.

With a focus on children with disabilities, it recognises their vulnerability and the need for specific measures to guarantee their rights, namely individualised assessment, procedural adaptations for full participation in processes, as well as the training of professionals, enabling them to deal with the specific needs of children with disabilities, guaranteeing adequate care and respect for their diversity.

03 National framework to provide information, procedural accommodations and support for children with disabilities who are victims of crime

3.1. Individual assessment of victims to identify their specific protection needs

The article 67-A of the Code of Criminal Procedure states that some victims can be considered “especially vulnerable”. This includes children victims and victims with

disabilities. Therefore, when a crime is reported, the statute of an especially vulnerable victim should be determined by these persons. This should be based on the individual assessment conducted by the legal authorities or police officers (Article 20 of National Victim Statute). Also, victims should receive a document that states this attribution and a brief explanation of their rights and duties, in a friendly way, including the right to receive specialised support.

The individual assessment is also addressed in the **Article 22 of Directive 2012/29/EU**, which may lead to the determination of protective measures to that victim. This assessment should consider **the type and nature of the crime, the circumstances surrounding its occurrence, and the personal attributes of the victim**. Concerning children, Paragraph 4 of the same article acknowledges them as particularly vulnerable victims, thereby warranting specific protective measures. Nevertheless, an individualised assessment of each child remains imperative to ascertain the appropriate measures applicable to their situation. This was fully transposed to Portuguese Law, through the article 21 of the National Victim Statute.

3.2. Protection measures for particularly vulnerable victims

According to **Article 23 of Directive 2012/29/EU**, victims are entitled to certain **measures during criminal investigations**. These include conducting victim interviews in designated or adapted facilities, ensuring interviews are conducted by qualified professionals or with their assistance, consistency in interviewers, and, in cases of sexual violence or intimate partner violence, accommodating the victim's preference for the interviewer's gender, provided it does not impede justice.

During the **criminal proceedings**, victims should be entitled to specific measures aimed at safeguarding their rights and well-being. These measures include: (1) avoiding visual contact between victims and perpetrators of the crime, particularly during testimonies, by using appropriate means, such as communication technologies; (2) allowing the victim to be heard in the courtroom without being present, in particular through the use of appropriate communication technologies; (3) avoid unnecessary inquiries into the victim's private life unrelated to the crime and (4) permitting hearings to be conducted in camera to maintain privacy and confidentiality, as stipulated in Article 23, Paragraph 3 of the aforementioned Directive.

In addition to these general measures, **Article 24 of Directive 2012/29/EU** introduces additional provisions specifically applicable when child victims are involved. These include: (1) Mandating the audiovisual recording of all interrogations of child victims during criminal investigations, with these recordings serving as admissible evidence in subsequent criminal proceedings. (2) Designating a special representative for the child victim by competent authorities if a conflict of interest arises between the holders of

parental responsibility and the child victim, or if the child victim is unaccompanied by their family or separated from them, following national law. (3) Guaranteeing the child victim's right to legal assistance and representation in their name in cases where a conflict of interests arises or may arise between the child victim and those holding parental responsibility.

Transposing these two articles of the Directive into the **Portuguese legal system**, Portugal implemented these measures in **Articles 21 to 24 of the Victim Statute**.

All especially vulnerable victims, can be awarded protective measures, such as: (1) Make available the possibility of victim interviews be conducted by the same person if preferred by the victim, as long as it doesn't affect criminal proceedings ; (2) Determine that questioning of victims of sexual violence, gender-based violence, or violence in intimate relationships, unless conducted by a public prosecutor or judge, can be carried out by a person of the same sex as the victim, if desired and as long as it doesn't affect criminal proceedings; (3) Implementing measures to prevent visual contact between victims and defendants, particularly during testimony, through the use of appropriate technological resources, and have the assistance of a specialised victim support officer in this moment, if needed; (4) Determine the recording of statements for future recall; (5) Determine that the criminal proceedings, including the trial, may take place without the presence of the public.

A record of victims' testimony was firstly designed for some victims and situations (e.g. someone that moved from Portugal to another country); however, with the Victim Statute it became available to especially vulnerable victims. This specific measure allows that, during the investigation phase (the first moment of the criminal proceeding), victims make their statement, that is recorded and it can be used throughout the other phases of the criminal proceeding. This statement is made in front of the Judge, the Public Prosecutor and the defendant's lawyer, to ensure that the adversarial principle is respected, since it's a fundamental one in Portuguese Law. It's an attempt to reduce secondary victimisation caused by the participation in the criminal proceedings.

It's important to highlight that all children should be entitled to participate in the criminal proceedings, as long as their age and maturity allows it – and this can only be made through the individual assessment. The assessment should take into account the child's cognitive potential, as less independence in decision-making is expected of children with moderate intellectual disability compared to a child with mild intellectual disability (Landesman-Dwyer, 2014). Regardless of cognitive impairment, the Guidelines of the Committee of Ministers of the Council of Europe on Justice Adapted for Children (2010) emphasise that children's hearing should be adapted to their level of understanding and should be carried out by qualified professionals, subject to assessment, and in an environment and conditions appropriate to their age, maturity, level of understanding and communication difficulties. No benchmarks have been

identified for assessing the age and maturity of children with disabilities to participate in the justice system. According to Comment No. 13 of the Committee on the Rights of the Child, 2011), where appropriate, specialised juvenile or family courts and procedures should be established for child victims of violence, such as the inclusion of specialised police units in the judicial system and the Office of the Prosecutor, allowing for adaptations to the judicial process and safeguarding equal and fair participation for child victims of disabilities.

Beyond the previously mentioned protective measures directed to all especially vulnerable victims, others can be applied to children, such as: (1) admit the presence of parents, representatives, or caregivers during the child's participation, unless there is a conflict of interests between parents and children (e.g. when there is a criminal proceeding that has the child as a victim and one or both parents as perpetrators); (2) make mandatory the attribution of a lawyer when a child has a conflict of interests with the person that legally should represent them (usually the parents); (3) Prohibit the dissemination of information that could lead to the identification of a child victim.

During the interviews it was possible to acknowledge that some of the legal measures are not respected. According to one of the interviewee "(...) Often those measures that are planned don't happen(...)"¹⁵, especially in relation to the contact with the defendant it was stated "(...) how many times is he there in the surroundings of the court? They are notified of the statements for future reference, they know the date and time (...)"¹⁶.

In general all the participants described that the statement for future recall reduces the impact of victimisation, yet it is important to state here that one participant mentioned that "(...) I've had situations in which there was a statement for future recall and even then the victims were called to court to make statements, because when it happened they were about 14 or 15 years old (...) then they were already older, they had 18 years old and they were called again"¹⁷.

Regarding the communication with the family or with the victims, the interviews are clear about the miss communication that exist. It has been said that to have access to information about criminal proceedings, you have to go to court. However, there is also information that can't be given to the victim or the guardians or all of that, particularly regarding the suspects¹⁸. To complete this statement, another inspector said that it is up to each professional's common sense to pass on additional information, since the only decent source is the court¹⁹.

¹⁵ Police Inspector, female, in the department of sexual crimes against children inspector

¹⁶ Police Inspector, female, in the department of sexual crimes against children inspector

¹⁷ Senior inspector, female, in the department of sexual crimes against children.

¹⁸ Senior inspector, female, in the department of sexual crimes against children.

¹⁹ Police Inspector, female, in the department of sexual crimes against children inspector

3.3. Other mechanisms of protection

Portuguese law also has some other measures that are also applied to victims, which can be read and interpreted alongside the specific measures detailed above.

Firstly, it's important to say that until 2015, the figure of a "victim" was not present in the Code of Criminal Procedure. The references to victims of crime were, somehow, distributed under other words as "witnesses" or "offended person". Understandably, because not all offended people are later proven to be victims. Therefore, it's common that some law enforcement agents more easily recall other mechanisms of protection that complement the specific measures brought by the Victim Statute.

Sometimes, some protective measures of Law 93/99 are also applicable to victims, since this Law concerns witnesses in criminal proceedings. Some of these measures can be: (1) non-disclosure of the witness's identity; (2) the possibility of indicating a different address in the criminal proceedings, other than the address of habitual residence; (3) for particularly vulnerable witnesses, the determination that they should be heard without unnecessary delay; (4) the provision of the possibility for the particularly vulnerable witness to go to the court before the hearing and get to know the rooms and places where it's going to happen the criminal proceeding in which they have to participate.

Also, the Code of Criminal Procedure, in its Article 352, states that the defendant should be removed of the room if it's believed that their presence would inhibit the witness/victim from telling the truth or if the witness/victim is under 16 and there is reason to believe that hearing them in the presence of the defendant would seriously harm them.

3.4. Right to information

The Convention on the Rights of Persons with Disabilities defines "**communication**": *"as "language, text display, braille, tactile communication, large characters, accessible multimedia, as well as written, audio, full language, human reader and augmentative and alternative modes, means and formats of communication, including accessible information and communication technology"* (Article 2).

One of the rights described in the Victim Statute is the Right to Information (Article 11). Several fields of information are described in that article, like the information that should be provided to victims, like, for example, how they can be supported, right to compensation, amongst others. Also, it's described that all victims are entitled to know what's happening in the criminal proceeding, except when the trial is closed for the

public (which is determined by the judicial authorities). In this case, no party to the case (neither the victim nor the offender) can consult it in its entirety.

The right to receive information regarding the progress of criminal proceedings, such as whether a case goes to trial or not, depends on the victim's expressed preference. In other words, it is incumbent upon the victim to inform the court of their desire to receive such information and to provide reasons for their request. However, if a victim's involvement as a civil party or assistant necessitates notification to protect their rights and interests, they are not entitled to refuse to receive such information.

Also, it's determined that all information that is given to victims should consider their specific needs. This includes taking into consideration the victim's **age, maturity, and any disabilities** that may affect their ability to comprehend the information provided. This is outlined in **paragraph 2 of Article 12 of the Victim Statute**. Although it is not explicitly stated, these measures are also intended to benefit child victims.

There was not a clear conclusion from the interviews regarding the children's access to information. It was said that the official source for gathering information on cases is the court²⁰, but this is not always the quickest source as there is a lack of human resources to provide this information²¹. Other information that reaches families and/or victims only comes from the good sense of each professional in updating them on the progress of the case²².

3.5. Communication

Typically, **the Portuguese language is utilised in all procedural acts, as stipulated in Article 92(2) of the Code of Criminal Procedure**. If, however, a person who is not proficient in the language is part of the process, a competent interpreter will be appointed to ensure their right to interpretation. Article 93 of the CPP defines what happens in communication with **individuals who are deaf, hearing-impaired, or speech impaired**. If the person is hard of hearing or deaf, a competent interpreter for sign language, lip-reading, or written expression will be designated (Article 93a). If, on the other hand, the person is mute but literate, questions will be posed orally and answered in writing; alternatively, an appropriate interpreter will be designated (Article 93b).

Also, the Victim Statute determines that all communications with the victim should take into account their specific needs, including potential disabilities.

²⁰ Police Inspector, female, in the department of sexual crimes against children inspector

²¹ Criminal investigating judge, female.

²² Criminal investigating judge, female.

However, there is a notable omission in this document as it fails to address the specific needs of children with disabilities and the adaptations that must be made for their benefit. The interviews conducted for the purposes of this study reveal a problem in the justice system's ability to meet the diverse needs of children with disabilities. This is particularly relevant to mental health. It's said that "(...) *the justice system has a hard time adapting to issues, sometimes not physical disabilities, but disabilities that have to do with mental health.*"²³ Regarding the individual assessment, one interviewee claimed that measures are mainly applied in family and juvenile courts rather than criminal proceedings²⁴. It was also said that it is challenging to pinpoint the nature of the crime, and also that the system and procedures can be disheartening for these children due to their lack of preparation. A systemic issue exists in the justice system's ability to meet the diverse needs of children with disabilities, particularly regarding mental health. As one interviewee pointed out, "*There wasn't attention given to adapting the process to account for the child's specificities*"²⁵.

The legal proceedings treat children with disabilities much the same as those without, leading to discomfort and embarrassment. Communication becomes challenging because these children often face limitations in verbal expression. Alternative methods can be helpful, as explained by one interviewee: "*There are many ways of reaching out with non-verbal forms of expression because verbal expression requires specific characteristics*"²⁶. Connected to these challenges is the lack of training among professionals, which leads to mislabeling and misinterpretation. The court setting, always formal and structured, can be inappropriate for children, especially those with disabilities. This formality, alongside the hierarchical structure, poses difficulties throughout the entire legal process, not just in the courtroom.

In general, interviewees expressed concerns about the justice system's inadequacy in catering to children's needs, particularly those with disabilities. Despite available legal and theoretical information, most interviewees (9 out of 10) highlighted the system's failure to address the diverse needs of children with disabilities, especially concerning mental health issues. There's a consensus that the justice system struggles to adapt to various disabilities, particularly those related to mental health. The absence of adaptation in communication often results in incomplete statements during future memory sessions, hindering investigations and leading to case closures."(...) *the justice system has a hard time adapting to issues, sometimes not physical disabilities, but disabilities that have to do with mental health.*"²⁷;

Moreover, there's a noted lack of preparation and understanding among children about their rights and the consequences of not speaking during court proceedings. Another

²³ Lawyer, male, with 32 years of experience

²⁴ Victim support worker, female, at the Portuguese Victim Support Association Support Offices

²⁵ Victim support worker, female, at the Portuguese Victim Support Association Support Offices

²⁶ Lawyer, male, with 32 years of experience

²⁷ Lawyer, male, with 32 years of experience

point that the inspectors brought up was the lack of preparation/knowledge that the children have at the time of their statements. In other words, they are told by the judge that they have the right not to speak, but it is not explained what happens if they don't: *"Victims go to court and are told that they cannot speak, but nobody explains the consequences if they don't (...) of course she won't want to speak, but she knows what happens if she doesn't"*²⁸.

Communication barriers are exacerbated by the limitations in verbal expression faced by many children with disabilities. While alternative methods like Augmentative and Alternative Communication (ACC) can help, their use depends solely on individual professionals rather than being standardised. Sometimes this lack of preparation for different situations can be determinate for the cases: *"(...) We've had situations where the case was closed because in future memory the child didn't reveal anything, didn't say anything, that is to say, nobody was able to arouse in them the desire to speak."*²⁹. Communication becomes challenging because these children often face limitations in verbal expression. An inspector³⁰ mentioned that there is a tendency to believe that children with disabilities may not be able to speak. However, Alternative methods can be helpful, as explained by one interviewed [AÖ1] and: *"There are many ways of reaching out with non-verbal forms of expression because verbal expression requires specific characteristics"*³¹. This lack of adaptation is due to a lack of knowledge on the part of the authorities and professionals. According to one interviewee, the system often chooses not to listen these children because the system cannot adapt: *"If the system has the chance, they won't listen because they can't adapt. I don't know if it's because they don't know how to do it, or if it's because they don't have the resources"*³².

The interviews underscore a systemic issue in the justice system's handling of children with disabilities, particularly concerning mental health. Professionals emphasise the need for tailored approaches, adequate information, and supportive measures to ensure these children are accommodated effectively. However, there's a notable absence of standardised guidelines and insufficient training among professionals, which exacerbates misinterpretations and mislabeling

The formal and hierarchical nature of legal proceedings poses additional challenges, particularly for children with disabilities who may find the courtroom setting intimidating and unsuitable for their needs. Despite calls for improved communication methods and tailored approaches, there's a lack of proactive measures and resources within the system to address these issues effectively. Overall, the interviews highlight the urgent need for systemic reforms and standardised guidelines to ensure that children,

²⁸ Police Inspector, female, in the department of sexual crimes against children inspector

²⁹ Police Inspector, female, in the department of sexual crimes against children inspector

³⁰ Police Inspector, female, in the department of sexual crimes against children inspector

³¹ Lawyer, male, with 32 years of experience

³² Victim support workers, female, at the Portuguese Support Association in the Department of Investigation and Criminal Action

especially those with disabilities, receive appropriate support, understanding, and accommodation within the justice system: *"If we're in a room, like a courtroom, where the judge sits upstairs behind a table in a giant chair, and the child is down here, it can be difficult to gather information for any child. This is especially true for children with disabilities."*³³

3.6. Special child protection units/departments

In Portugal, several institutions focus their work on the well-being of children and children with disabilities and focus on a specific area of intervention. Here's a brief overview of some of these associations:

The Association of the Blind and Visually Impaired of Portugal (ACAPO) is a well-established organisation with 13 branches. Its main objective is to promote social inclusion and enhance the quality of life of individuals with visual impairments. This aligns with Article 23 of the Convention on the Rights of the Child, which emphasises the importance of protecting and supporting children with disabilities. **APECDA, the Association of Parents for the Education of Hearing Impaired Children**, similarly advocates for the general, individual, and collective rights of individuals with disabilities in Portugal, with a specific focus on hearing-impaired children. Lastly, the **Portuguese Association of Parents and Friends of Mentally Citizens with disabilities (APPACDM)** is dedicated to providing support to mentally individuals with disabilities of all ages.

Provedor de Justiça, with a similar function to the Ombudsman, plays an important role in defending the rights of children with disabilities in Portugal. Individuals or their legal representatives can lodge complaints with the Ombudsman if they believe that a child with a disability has been mistreated or had their rights violated by a public body, and the Ombudsman investigates these complaints independently and impartially, seeking to identify any infringements and promote solutions; promoting systemic change: through the identification of larger issues that affect children with disabilities. Based on these results, the Ombudsman can provide recommendations to public organisations to change their policies and practices to better protect children's rights; raising awareness through publications, workshops, etc., empowering children and families to understand their rights and seek recourse when they are violated.

In addition, one inspector mentioned that there is a helpline available for those in need of social support. The emergency social line 14 is typically used by Portuguese citizens who find themselves in situations of vulnerability and require assistance. However, it was noted that finding an emergency shelter for children with disabilities can be

³³ Judge, female and retired

extremely challenging. As stated by one inspector, *"we are sent from here to there, we spend hours with the child there without a solution"*³⁴.

3.7. Training of professionals

The need for training of professionals to intervene with children with disabilities is also present in the **Article 13(2) of the Convention on the Rights of Persons with Disabilities**, which encourages states to provide appropriate training for professionals who come into contact with people with disabilities to ensure effective access to justice.

In Portugal, the Center for Judicial Studies (CEJ), which coordinates the training of Judges and Public Prosecutors, has provided some training on the Rights of Persons with Disabilities. However, specific training on issues related to children with disabilities and the procedural adaptations they require has been lacking. The CEJ Continuous Training Plan 2023-2024 does not include any training on this topic. According to specialists, in reality they do have some training on this subject, but very superficial, and based on materials handed by psychologists.

Although the importance of training professionals is assessed in international and national legislation, the conducted interviews reveal an acknowledgment that many professionals lack such training.

In this context, several guidelines are directly relevant to the interviewees' professions. However, there's a pervasive perception that the system falls short in meeting the needs of children with disabilities who are victims of crime, largely due to the persistence of formalism in professional practice. All interviewees concur that learning to work with children with disabilities primarily stems from their professional experiences and personal commitment to advancing their skills. As one interviewee pointed out, the lack of training for professionals across the legal and law enforcement fields presents significant challenges: *"(...) the lack of training for professionals, police and in the judicial field, is also a gap. Not having training on how to handle these types of situations naturally presents a set of even greater challenges(...)"*³⁵. Doing this, the system will always depend on the person's personality, initiative, and enthusiasm for the role they hold³⁶. In fact, this was the main idea that was agreed between the interviews.

The prosecutor emphasised the lack of adequate training for prosecutors when it comes to interviewing children, especially those with disabilities. During a statement, the prosecutor mentioned, *"we didn't have any specific training on how to interview a*

³⁴ Police Inspector, female, in the department of sexual crimes against children inspector

³⁵ Victim support worker, female, at the Portuguese Victim Support Association Support Offices

³⁶ Victim support workers, female, at the Portuguese Support Association in the Department of Investigation and Criminal Action

child, a child! Not even talking about disabilities"³⁷. One interviewee shared their initiative in organizing a congress titled "*Lawyers and Psychologists: back to back until when?*"³⁸. This congress aimed to facilitate knowledge sharing among professionals from different disciplines to enhance their perspectives. While most professionals express interest in participating in such initiatives, some acknowledge that not all colleagues may share the same enthusiasm if participation were voluntary.

Regarding Security Officers, there were differing views on training. The chief inspector mentioned that they receive training for interviews with children, and in cases involving children with disabilities, they would implement an adapted approach based on the child's needs and disability³⁹. However, other inspectors noted that they had to rely on their own initiative to understand the best approach, as it was not covered in their training: "*(...) But no one teaches us this (...)*"⁴⁰.

³⁷ Public prosecutor, female.

³⁸ Lawyer, male, with 32 years of experience

³⁹ Police Inspector, female, in the department of sexual crimes against children inspector

⁴⁰ Police Inspector, female, in the department of sexual crimes against children inspector

04

ICT AND AI IN
CRIMINAL JUSTICE
SYSTEM FOR
ACCESSIBILITY AND
MULTIDISCIPLINARY
COOPERATION

01 Technology in use in criminal justice by criminal justice professionals, child protection units/professionals and court staff to share information about what has been done in the case

In today's digital age, there is a rapid pace of **technological innovations** that have the potential to significantly enhance the development of justice and Criminal Law. While technology can undoubtedly aid in uncovering the truth, it is essential to exercise caution and maintain a balance that upholds **constitutional principles**.

The Citius platform offers a comprehensive digital solution that allows all information and documents related to a case to be easily accessible by all professionals of courts and the lawyers. The Portuguese judicial system boasts a legal-documentary database developed by the Institute of Management and Equipment of Justice, which provides access to court decisions issued by the country's Courts of Appeal, Supreme Court of Justice, and Constitutional Court. This consultation allows for access to all court decisions, including their factual and legal basis, thereby making them widely accessible. This is particularly significant as court decisions should be based on past decisions, and this documentary basis is a vital component in this regard.

Despite the information given, the interview responses go in another direction. The interviews said the information is shared informally among the different stakeholders. No system has all the information about a case and that is shared by everyone working on the case. In smaller circles, it is said that there is a familiarity with the various professionals and that this facilitates access to information. On the other hand, in larger circles, one gets the impression that this transmission of information doesn't work very well – *"cooperation is limited"*, and *"I think there are few people who can communicate within a case"*⁴¹.

In general, all the participants revealed that there is no guidelines or legislation that ensures communication is done correctly: *"there is no official protocol, there is no legislation that obliges us to do this"*⁴², leading once again, to the personal motivation and interest of each other *"if we have a public prosecutor who is sensitive and wants to go further, he will try within the youth protection professionals to find what resources exist."*⁴³

One other important aspect mentioned by 3 in 4 of the participants from the judiciary police is the fact that when dealing with criminal matters specifically sexual offences there is a huge need to work fast and with all the necessary information and many times there is impediments by hospitals *"(...) we don't have quick access to this clinical*

⁴¹ Victim support workers, female, at the Portuguese Support Association in the Department of Investigation and Criminal Action

⁴² Police Inspector, female, in the department of sexual crimes against children inspector

⁴³ Police Inspector, female, in the department of sexual crimes against children inspector

documentation.”⁴⁴ this happens frequently due to data protection and legal provisions and it depends on the hospital, certain hospitals provide the necessary information others require court authorisations “wants the order of the public prosecutor's office and we send the order of delegation of competences, that the PJ has a declaration of competences in that case and the answer is *“ah that's not enough, it has to be substantiated”*⁴⁵, this complicates the process as it evolves much time and patience.

02 Technology in use in criminal justice in order to inform the citizens or to support citizens' filing criminal complaints to courts or obtain information about their case, rights or proceedings

The most common way for anyone to file a complaint is to go to the criminal police bodies and explain the situation. However, it is increasingly necessary to implement systems that allow complaints to be filed digitally. The Portuguese legal system has taken an important step in this direction by creating the Electronic Complaint System. This system was established by **Ordinance nº 1593/2007 on December 17th** and allows people to complain about the website for **certain types of crimes**, such as simple physical harm, domestic violence, bad treatment, human trafficking, pimping, theft, robbery, and more. However, this **system is not intended to respond to emergencies or those that require an immediate response** from security forces or services, particularly when a crime is being committed. For crimes not covered by the system, victims must contact or go to a judicial authority or law enforcement agency.

APAV has also developed the Infovictims website (<https://www.infovictimas.pt/en>), which provides all citizens the access to user-friendly information about victims' rights in the criminal proceedings, using either text and or interactive tools⁴⁶. Recently, this website was adjusted to be also available to vision and hearing impaired-victims, as an increased font size.

During the interviews, in addition to the mentioned projects, two other projects were also discussed. The first project, named 'Project 12', aims to promote accessible justice with a focus on the needs and rights of children. The judiciary police use this project to promote awareness and inform on good practices in crime prevention. The project also considers children with deafness problems by incorporating sign language. However, the project is not yet adapted for children with disabilities or users of AAC. Out of the nine interviewees, only one expressed being more at ease with inclusivity programs for children with disabilities.

⁴⁴ Senior inspector, female, in the department of sexual crimes against children

⁴⁵ Senior inspector, female, in the department of sexual crimes against children

⁴⁶ Can be seen at www.infovictimas.pt

03 Technical accessibility for persons with disabilities

Currently, the **accessibility of systems for users with disabilities is reported to be limited**. However, it is anticipated that the modernisation of the judicial system and the integration of new digital technologies will enhance accessibility for individuals with disabilities. **Efforts are underway to establish a dedicated courtroom for children**, indicating progress in this regard. Consequently, it is imperative for entities to devise mechanisms to ensure that digital systems are accessible to children with disabilities, especially those with intellectual and psychosocial disabilities, as well as users of Augmentative and Alternative Communication (AAC) systems.

04 AI projects in civil and criminal justice that improve victims' access to justice

In Portugal, it has been understood that **new technologies** can have a very positive impact in several areas, including the area of justice. In this sense, the implementation of **a modernisation of justice**, through a **digital transformation in the courts**, has been increasingly present (OECD, 2020).

The digital transformation agenda encompasses a range of initiatives, including but not limited to, **upgrading the technological infrastructure of courtrooms** to enable streamlined processes and facilitate the judge's interventions and decisions, ensuring equitable access to justice for all. Additionally, it involves promoting **real-time access** to procedural documents for individual access and real-time sharing of procedural documents through justice information systems, enabling judges, agents, public prosecutors, and secretariats to access the necessary documents seamlessly. Furthermore, the plan includes introducing a new interface for judges, which provides all the required functionalities for processing, with the support of artificial intelligence solutions, eventually eliminating the need to consult CITIUS and SITAF- provision of **the Magistrates platform**⁴⁷). It also includes ensuring the **interoperability of court information systems**.

The **GovTech Justice Strategy**⁴⁸ aims to create a suite of innovative and digital transformation initiatives that accelerate the modernisation of the judiciary system. To this end, a protocol was signed between the **Foundation for Science and Technology (FCT)** and the **Institute of Financial Management and Justice Equipment (IGFEJ)** to promote research and innovation projects within the scope of

⁴⁷ Platform whose use would begin at the end of 2023. Specific training is planned for judges on the use of this platform.

⁴⁸ Consult at: <https://govtech.justica.gov.pt/>

the GovTech Justice strategy. Although the modernisation of the Portuguese judiciary system is still ongoing, there are already some data that are important and that substantiate an important evolution, such as the fact that **1,500 courtrooms have been renovated and technologically equipped**, including **court hearing rooms for children**.

Many companies are keen on developing Artificial Intelligence (AI) projects, with particular emphasis on the project of a **company in Covilhã that created a computer system that uses AI to help in decision-making in the area of criminal justice**⁴⁹, by providing information about the likelihood of prisoner violence, suicide, and recidivism. Although this project is more aimed at defendants, it could certainly be a step towards the development of similar projects from the victim's perspective.

The interviews reveal that there is a systemic problem in the justice system's ability to address the diverse needs of children with disabilities, especially those related to mental health. The lack of attention to adapting processes for the child's specificities is a significant challenge. In practice, the assessment often diverges from what is prescribed in theory, law, or best practices. The legal process treats children with disabilities similarly to those without any condition, leading to discomfort and communication barriers. The lack of training among professionals contributes to mislabeling and misinterpretation. Specialists are needed in legal proceedings to understand and meet the unique needs of children with disabilities. However, it is not mandatory, it depends on individual preferences.

⁴⁹ Publico.pt (2023). Empresa da Covilhã cria sistema de IA que acelera decisões de justiça criminal. Available at: <https://www.publico.pt/2023/12/22/tecnologia/noticia/empresa-covilha-cria-sistema-ia-acelera-decisoes-justica-criminal-2074632>

05

PRACTICAL FUNCTIONING OF THE CRIMINAL JUSTICE SYSTEM

01 Individual assessment and referral

The assessment of individual needs, as prescribed in Article 22 of the VRD, does not take place in Portugal. Article 22 requires all victims of all crimes to be assessed for their protection needs, but as far as I know, in Portugal this only happens for victims who are considered vulnerable.

Once **Directive 2012/29/EU** was transposed into the Portuguese legal system, Portugal implemented its guidelines, regarding the individual assessment and referral of the victim, in the **Victim Statute**.

As stated above, individual assessment is defined by **Article 21** of the Victim Statute. The Statute defines that this assessment should be conducted by the judicial authorities or law enforcement agencies. However, the Statute contains no guidelines – neither in relation to children with disabilities, nor in relation to all victims of crimes, in general – for any of those entities on how to perform this assessment. In the absence of such legislative detail, the assessment is made only to determine if a victim should be granted the status of a particularly vulnerable victim. However, individual needs assessment for protection does not exist in practice.

This is particularly important since without this assessment, because – where there is no assessment, there is no possibility to know and keep track of the protection needs of victims, including their specific needs regarding communication, for example. In the absence of the assessment, protection measures will be put into place with delay, if they are put into place at all.

Regarding the referral, despite the **Article 13** states that some victims (domestic violence and sexual violence) have priority when being referred to a Victim Support Officer, it doesn't say how.

APAV has established some referral mechanisms to ensure that victims receive this support. If victims agree, their contacts are shared from the support entity to APAV. Once such consent is obtained, APAV proactively contacts them, reducing the risk of secondary victimisation and increasing the probability that victims will receive support. The fact that support services contact victims proactively significantly increases the likelihood of them receiving support. Expecting victims only to receive information about where to get services and seek support is much less effective in ensuring that victims are welcomed by victim support services. These referral mechanisms are not specific to children with disabilities, although some of them reach APAV and victim support through this referral, which is established with several agencies, like National Police (Polícia Judiciária) or National Committee for the Promotion of Rights and Protection of Children and Youth.

Directive 2012/29/EU was incorporated into the legal system of Portugal, following which, the country implemented its guidelines concerning the individual endorsement of victims in the Victim Statute. According to **Article 21** of the aforementioned statute, a personalised evaluation must be conducted to determine whether the victim belongs to the category **of particularly vulnerable victims**, who require special protection measures. This evaluation is mandatory only for the vulnerable victims. As per the law, an **"especially vulnerable victim"** is defined as a victim whose **age, health status, disability, or the nature, extent, and duration of victimisation** has led to severe injuries, affecting the victim's psychological balance or social integration conditions, as enshrined in **Article 67A(1), paragraph b) of the Code of Criminal Procedure**.

The individual assessment of the victim is carried out by the judicial authorities⁵⁰ or criminal police bodies⁵¹, which are the ones that can assign the status of a particularly vulnerable victim. Although the law does not explicitly mention child victims with disabilities **as especially vulnerable**, it is understood that they belong to this category, and therefore, an individual assessment of such victims is mandatory. Irrespective of the type of disability, an assessment is mandatory to understand the appropriate measures that should be adopted.

Although the child's wishes must be taken into account, the fact that the child has a disability can compromise their hearing and the judge may have some reservations regarding what they expressed. Concerning children using AAC, there is a gap, as this right to hearing is seriously called into question.

It is during the **child's individual assessment** that the child's needs are understood throughout the entire process, including their communication needs. However, it's crucial that the authorities understand these needs during the first contact and respond appropriately. Article 93 of the Portuguese Code of Criminal Procedure highlights the measures that must be taken when providing statements by deaf, hard of hearing or mute individuals, but it doesn't mention specific precautions for children with disabilities, which creates a gap that needs to be filled. The article only specifies a particular communication style depending on the disability or the appointment of an interpreter to facilitate communication between parties.

⁵⁰ The judicial authorities are the judge, the investigating judge and the Public Prosecutor's Office – art.1, paragraph b) of the Code of Criminal Procedure.

⁵¹ According to article 1, paragraph c) of the Code of Criminal Procedure, criminal police bodies are "all entities and police agents who are responsible for carrying out any acts ordered by a judicial authority or determined by this code". Law nº49/2008 provides in article 3, nº1 that criminal police bodies with generic competence are the Judiciary Police (arts.1 to 5 of Decree-Law nº137/2019, of September 13), the Republican National Guard (Art3, no.1, paragraph e) of Law no. 53/2007, of August 31), describing its competence in arts.6 and 7. Criminal police bodies operate under the direction of judicial authorities and are functionally dependent on them.

Children with disabilities are highly vulnerable and susceptible to behavioural changes resulting from their environment, making them more likely to **experience secondary victimisation**. To combat this problem, certain mechanisms have been put in place. Firstly, the **victim must be heard as soon as possible after the crime** (without delay and in a confidential environment) and using **simple language**, according to Article 17 of the Victim Statute. **Hearings must also be kept private**. Additionally, secondary victimisation can be prevented by creating **statements for future memory**, as stated in Article 21, n°2, paragraph d) of the Victim Statute. During the investigation, the child may be interrogated, as detailed in Article 24 of the same statute. The child's statements will be taken into account at the trial hearing, avoiding the need for the victim to repeat the facts, as outlined in Article 271 of the Criminal Procedure Code. There must also be coordination between the entities involved in the process, so that all documentation is accessible to everyone, thus avoiding the victim being questioned several times about the same situation.

The lack of application of these techniques contributes significantly to child victims suffering from secondary victimisation, as they are vulnerable to the situation themselves and are forced to relive the crime. During an individual assessment of a child, it's essential to understand their needs, including communication requirements. When providing statements by deaf, hard of hearing, or mute individuals, Article 93 of the Criminal Procedure Code specifies the necessary measures to be taken. However, there are no specific precautions mentioned for children with different other disabilities, in particular intellectual and psycho-social disabilities and specific communication needs, creating a gap that needs to be addressed. The article only outlines a communication style depending on the disability or the appointment of an interpreter to facilitate communication between parties.

The main idea regarding participants from the judiciary police is that they typically don't have a specific process for evaluating children. If a child already has a diagnosis, they try to gather as much information as possible from various sources. If there's no diagnosis, they may refer the child to the National Institute of Legal Medicine for psychological or psychiatric evaluations. For prosecutors and support victim support workers, the main issue is the lack of a solid network of psychologists, psychiatrists, or specialised professionals to help assess children. This leaves them feeling unsure about what steps to take. Sometimes, they rely on experts from the National Institute of Legal Medicine to assess a child's ability to testify credibly. However, they might request these experts to continue supporting the child through the legal process, even though it's not officially their role, relying on goodwill. Overall, there's a sense of uncertainty among professionals about who should be responsible for evaluating and supporting children involved in legal proceedings: *“(...) at the end of the day, we're a bit at sixes and sevens here, who's going to be nominated (...)?”* (E7).

02 Procedural accommodations

The **specific adaptations to each specific child victim depend**, to a large extent, **on their individual assessment**, as it is in this context that they can really understand what the child's true needs are. However, it is not always possible to identify, *a priori*, the disability in question, so the identification of these adaptations can only be carried out during the process. Although some adaptations are provided for by law, many others exist that derive from the **sensitivity of each professional**. For example, the use of accessible and simple language depends greatly on the professional in question, as what may be simple for one may not be simple for another. In the same way, professionals can themselves carry out their role in the way they think is most appropriate and most facilitating for the victim, namely: not wearing a uniform, providing breaks and pauses during the hearing of the child victim, allowing their representative is always, at any time, by the child's side, etc.

The experience from the interviews is consistent with the literature. Now, the adaptations depend on the sensitivity of the professionals and not on the system itself. The professionals agree the lack of training is a gap in the judicial system. There is a consensus amongst the professionals that there is a need to adopt a more inclusive language when interacting with children and providing adequate training for professionals to meet the unique needs of these children. Regarding to the infrastructures, all interviewees agree on the need to create child-friendly rooms[AI|V2] for taking statements and ensure infrastructure accessibility - *“(...) setting up a room with a child-friendly environment, I think this is one of the major aspects. If we have a room, like a courtroom, where the judge sits up there behind a large desk in a giant chair, and the child is down here, this can hinder the gathering of information, even more so if the child has any disabilities.”*⁵².

The one topic where there was most consensus among the participants was the formality of the system, 9 out 10 of the participants revealed that the system was too formal and that had a direct impact on the child experience in different forms, there was the idea that no matter how many adaptations could be done this idea of adapting would reduce as the system would move forward⁵³, as well as the relationship with the victims no matter how strong it is with the professional, when they reach the court, the atmosphere it is too formal and that relationship does not occur, in fact *“(...) the formalism that the court itself imposes determines that there is a greater distance”* (E6). Although judges have adapted to not wearing the traditional garment, the beca, many formal factors still exist in their professional practice.

⁵² Victim support worker, female, at the Portuguese Victim Support Association Support Offices

⁵³ Police Inspector, female, in the department of sexual crimes against children inspector

One of the positive outcomes from the interviews was the existence of the Victim Support Office within the Department of investigation and penal action, this was a protocol developed by the Ministry of Justice, the Public Prosecutor's Office, the Association of Women against Violence (AMVC), the Portuguese Association for Victim Support (APAV) and the Union of Women, Alternative and Response (UMAR). According to the prosecutor and technician, this relationship is highly beneficial for the victims. The prosecutor noticed that since the victim support office was established in the court, there is a better rapport between the child and the technician. According to both the prosecutor and the victim support workers, the relationship between the victim support office and the child has improved since the office was established in the court. Previously, when the court would request social support for a technician, the technician would meet the child only five minutes before the diligence, resulting in a lack of trust. As a result, the child's testimony was often not credible. However, with the establishment of the victim support office, there is now a relationship of trust between the child and the victim support workers. According to the prosecutor, this approach has resulted in minors giving more credible and spontaneous testimonies. In the prosecutor's own words, *"We have received much more credible and spontaneous testimonies from minors who arrive here knowing exactly what they are supposed to do, compared to those who suddenly drop in without any prior knowledge."* (E10)

Two inspectors, a technician, and a prosecutor suggested that one way to make the legal process easier for children is to carry out the enquiry in a familiar and safe space. For example, if a child is used to their psychologist's office, it might be better to conduct the enquiry there instead of in court. In some cases, the court may even be willing to move to the institution or office if it is safe and convenient for the child. There were two examples where this happened, with a witness with cerebral palsy was interviewed in a private room at the institution, and when a child was examined in the technician's office at the court. However, it was noted that such adaptations are not always made because courts are often unwilling to do so: *"And that was the only experience we had that was different, but it was at our suggestion, right? It wasn't because the court thought this child had special needs (...)"*⁵⁴

03 Provision of support, information, and communication

The **adaptations provided for by law** for this type of situation are the **main guidelines for professionals**, along with common sense and individual sensitivity. However, each case requires a unique approach, and it can be challenging to identify and address the specific needs of a child with disabilities. The law only provides for interpreters in cases involving deaf, mute, or hearing-impaired victims. For other types of disabilities, professionals may **not be aware of the necessary adaptations**. Some

⁵⁴ Judge, female and retired

techniques must be used by professionals so that repeated hearings, secondary victimisation, and the victim's contact with many professionals can be avoided.

In the case of **child victims**, and because they are especially vulnerable victims, the **interviews** must be carried out by the same person, if possible. However, looking to the way that the Portuguese legal system is designed, it's almost impossible to have that into practice: the child is heard in the Police and later by the judge; even if it's not heard by the judge, it cannot be the same person that performs the technical assessment if that child is able to testify or what are the consequences that the child is facing and if they are related to the violence suffered.

In Portugal, the Barnahus Model is not established, although it was defined very recently as a priority for the year of 2024 in the State budget, after the proposal of a parliamentary group.

The support and information provided by victim support organisations, from referral or by determination of the Judge or the Public Prosecutor (Article 15 of Victim Statute) tries to incorporate all victims' needs. However, all the good practices mentioned for dealing with children with disabilities (specific infrastructures, child-friendly rooms, Barnahus model, use of child-friendly language, use of AAC tools) are not mandatory. It ultimately depends on the will of each professional whether they choose to adapt their approach or not. Some professionals may choose to collaborate with other experts to facilitate direct contact with the child, particularly if the child is already supported by someone. However, not all professionals follow this practice. Especially on court hearings, like Statements for Future Recall, which, by the Portuguese law, are conducted by a judge, they can decide to pose the questions to a specialised professional (like a Victim Support Officer) that can address them to the child in a friendly way and adapted to their needs, but it's not a common practice.

The participants had mixed opinions about the Barnahus model. While some admired the model, others felt that it may not be suitable for Portugal. They were concerned about the country being compartmentalised, and the practical difficulties of transporting children and families to the facility. Some concerns were raised about using interpreters to communicate with children with disabilities, except for support victim workers. The biggest fear is that having an interpreter present might hinder the opportunity to build a close relationship with the child.



06

**CHILDREN'S
EXPERIENCES OF
THE CRIMINAL
JUSTICE SYSTEM**

01 Barriers to the participation of children with disabilities in criminal proceedings

Children with disabilities must be treated equally and their access to justice must not be compromised because of their disability. These children have the right to participate in proceedings from the outset and can lodge a complaint if they are victims of a crime. This right can never be denied and, even if the child needs legal representation, they must be allowed to exercise this right whenever necessary. The principle of hearing the child ensures that they can play an active role in the process.

The moment the complaint is lodged is very important, as it is the driving force behind the whole process. Children often don't know where or how to make a complaint because they don't have access to information on the subject. This turns out to be the first obstacle to tackle, as many children end up giving up on filing a complaint because they don't know how to do it.

In this context, filing a complaint is the child's first right to be exercised, so professionals **must**, at that moment, be careful to explain all the contours of the case and **provide all the necessary information** in an accessible way and in simple language. However, professionals do not always have adequate training in this regard, so it is difficult for children to be understood and understand what is at stake.

The presentation of the facts by the child victims is an important process, as it is through that presentation (as well as all the evidence that was acquired) that the Public Prosecutor's Office will deduce the accusation. As **communication with the child** is very important, it cannot always occur in the same way, as professionals are unable to communicate with them, either because they do not have this training, or because they do not have systems at their disposal that allow them to communicate with each other, such as through AAC techniques. Furthermore, **court facilities** are often not equipped to accommodate children with disabilities's participation in the trial hearing.

While Portuguese legislation outlines procedural adaptations for children with disabilities, the effectiveness hinges on the implementation by justice professionals. Techniques like clear, concise language and incorporating breaks during questioning are crucial for ensuring a child-centered approach. Moving beyond good intentions, mandatory training on disability awareness and effective communication strategies for justice professionals would strengthen their ability to provide optimal support to children with diverse needs.

Without such training, legal professionals may lack the understanding and knowledge necessary to respond appropriately to such situations. The lack of training on the rights of people with disabilities for police, court staff, lawyers, forensic experts, psychologists, social workers, judges and public prosecutors creates a significant obstacle to their access to justice. Available training is very scarce, and information on good practices in interacting with people with disabilities is also rare.

The difficulty in accessing children with intellectual disabilities or their families, makes it challenging to address and barriers to the participation of children with disabilities in criminal proceedings.

Based on the work carried out, barriers to the use of AAC may encounter barriers in the judicial ecosystem, hindering their effective participation, namely, lack of knowledge of AAC on the part of professionals in the judicial system, scarcity of specific resources and materials, and the difficulty in adapting judicial procedures to the communication needs of child victims with disabilities.

AAC plays a crucial role in overcoming communication barriers for children with disabilities, and it is essential to carry out assessments to identify the best AAC approach for each child. In Portugal, the integration of AAC tools into the school curriculum to promote the development of communication from childhood, companies focused on developing AAC software adapted to the Portuguese language and culture, and support groups for parents and caregivers stand out.

Based on our knowledge, there is a lack of comprehensive data on crime and disability victimisation in Portugal. This makes it difficult to understand the scale of the problem and formulate effective public policies.

Although some official bodies, such as the Attorney General's Office (Ombudsman's Office), and NGOs, such as the Portuguese Association of Parents and Friends Mentally Citizens with disabilities (APPCDM), can collect some data, there is a lack of standardised collection methods throughout the country. This creates discrepancies in the available information and makes it difficult to obtain an accurate overview of the situation.

There are currently no statistics available on the number of children with disabilities who are victims of crime in Portugal. There is also no data on reported and unreported crime rates for children with disabilities compared to the general population, including children without disabilities and the entire population with disabilities.



07

CONCLUSIONS AND RECOMMENDATIONS

01 Good practices

Although the rights of child victims with disabilities are not addressed as they should be in our legal system, there are already some institutions and entities that are concerned with the exercise of their rights and that create appropriate mechanisms. For example, **Instituto de Apoio à Criança (IAC)** contains the SOS Criança service that seeks to provide support to children through a telephone line or personalised assistance. However, the helpline's work does not appear to be accessible to children with disabilities. **The Portuguese Victim Support Association (APAV)** provides free and completely confidential support to all victims, including those with disabilities. This support can be made available through the Victim Support Line 116006, or through any APAV Victim Support Office. In the case of victims of crime and violence with hearing impairment, there is also the Portuguese Sign Language Video Interpreter Service. Although web accessibility is insufficient for children with disabilities, it is through the Internet that most victims can obtain information about their rights. Citizens with disabilities have a free phone line 800208462, aimed at obtaining support regarding their rights and support in the areas of health, social security, housing, facilities and services.

There are several awareness campaigns so that child victims can exercise their rights (e.g. APAV, IAC - Child Support Institute, SOS Child), normally promoted by institutions that protect child victims. However, no campaign has children with disabilities as its main focus.

02 Conclusions

The **general objective** of this national informative document was to provide an **overview of the main national barriers** that prevent child victims with disabilities from accessing justice and receiving procedural adaptations in Portugal, as well as provide best practices to overcome these gaps. While victims with disabilities are widely addressed in international instruments, it is believed that **Portugal has not yet fully adopted this approach**, particularly regarding child victims with disabilities, those with intellectual or psychosocial disabilities, and users of AAC. One of the most obvious barriers in this area is the **lack of accessibility** of information to children with disabilities victims – **the principle of information**, established in **Article 7 of the Victim Statute**. Although basic information is available and accessible to people without disabilities, the same does not happen with children with disabilities who, in most cases, do not know how to exercise their rights, such as to file a complaint, ending up, in some cases, not doing so, and leading to an eventual increase of the dark figures of crime. Even when they have already been victims of crime, the provision of information on their rights is not made in a way they can fully understand.

On the other hand, it appears that there is a **lack of training for professionals** on issues related to children with disabilities and the adaptations they should benefit from. Many professionals themselves choose to create conditions and measures that can help the child victim to have an accessible and equitable process, however, it is up to the training entities to establish more specific training so that the children's needs are met. This lack of training can compromise the exercise of the rights of children with disabilities, as they often do not know how to communicate with them.

The language used in courts is, in itself, complicated for citizens without any disability. In the case of children with disabilities, this language is very inappropriate, as it can compromise **communication with the child** and, consequently, their **participation in the process**. Child victims with disabilities cannot communicate with the same ease and effectiveness and, in this sense, the communication used must favor means that are appropriate and understandable to them.

Once international instruments have been ratified, Portugal is bound by them and, in this sense, must make the changes to the law that are necessary so that national and international law are in line ("People with disabilities have the right to all substantive and procedures recognised in international law, on an equal basis with other people" – **Principle 5 of the Principles and Guidelines on Access to Justice for Persons with Disabilities**). However, it appears that Portuguese law does not intervene in many points related to child victims with disabilities, and our legislator must make some changes and create specific standards to fill the existing gaps.

The fact that child victims with disabilities are considered **especially vulnerable victims** means that they benefit from relevant **procedural adaptations** that help them to have effective and true procedural participation. However, the procedural adaptations provided for in the law are aimed at particularly vulnerable victims in general, with no specific measures for children with disabilities. Since children deserve increased protection from the State, it must establish specific adaptations for various types of disabilities (and not just for those who are hearing impaired, mute or blind), allowing any child with any type of disability to have adaptations at their disposal. that allow you to be in the process. Although there is a process of modernisation of the courts taking place, there are still many situations that must be altered and changed. In this case, the **use of digital services in hearings** allows children to communicate and respond appropriately to what is asked of them. On the other hand, the **physical facilities of the courts**, as well as the transport there, end up making it difficult for children with disabilities to be present, as the facilities are not adapted for children with disabilities, meaning there needs to be a profound reform in this area.

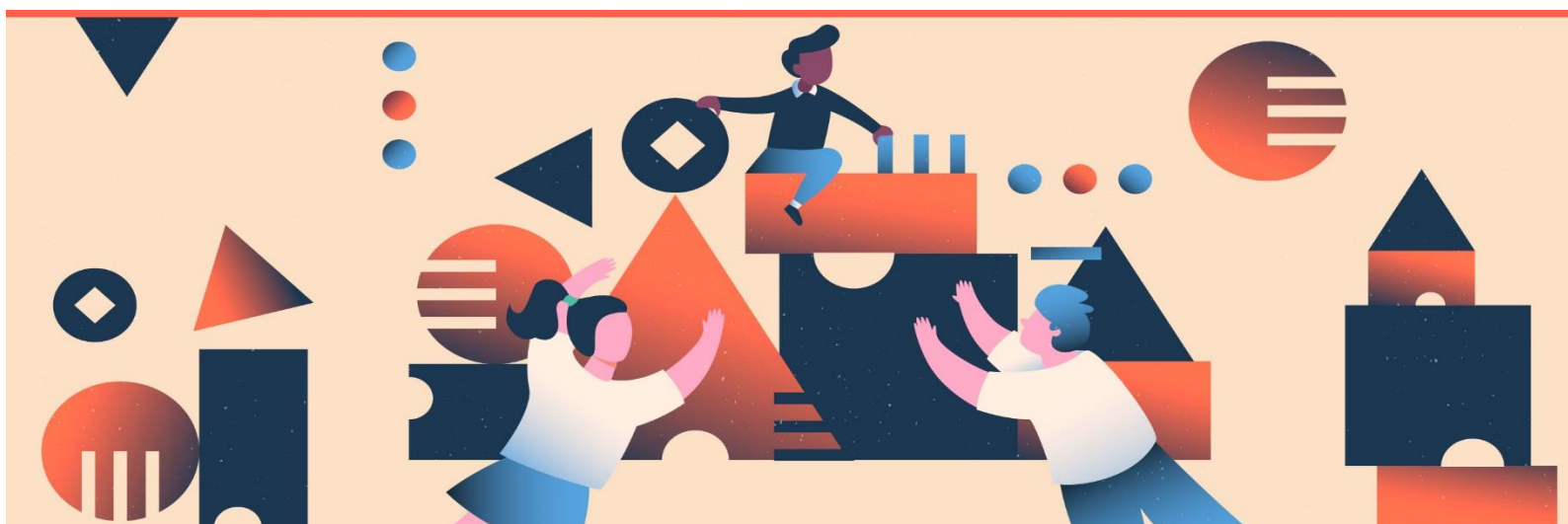
03 Recommendations

Recommendations

To address the discrimination faced by people with disabilities in accessing justice and to enhance their effective access to the judicial system, the following measures are necessary:

1. Giving **priority to access to justice** for child victims with disabilities in the national political agenda, **including the provision of procedural adaptations** that can be implemented for various types of disabilities.
2. Developing **training programs** that cover all aspects of the rights of child victims with disabilities for justice professionals, and that are aimed at everyone who works in the judicial system.
3. Creating a **manual of best practices to guide criminal police officers**, judicial authorities, the Public Prosecutor's Office, and judges in responding to the needs of child victims with disabilities and ensuring the proper functioning of the legal process.
4. **Using simple, accessible, and understandable language** throughout the legal process, including when the victim presents the complaint. This includes using appropriate formats such as Braille and easy reading to ensure that all information is clearly conveyed to the victim.
5. Encourage **the participation of child victims with disabilities of some age and maturity** (as well as institutions that intervene in this context) in the process of improving the judicial system, as they can contribute and give their opinion regarding what should or should not be improved;
6. Improve the **accessibility of websites**.
7. Establishing appropriate support services, such as multidisciplinary teams, within the criminal justice system to ensure procedural adaptations for people with disabilities and to ensure more accessible justice for them.
8. **The Center for Judicial Studies**, is responsible for training Portuguese magistrates. However, it needs to organise **more training activities** to help them exercise the rights of child victims with disabilities. These professionals may have to deal with a process involving a child with a disability at any time. Therefore, they need to know how to act in these situations. Similarly, the **Portuguese Bar Association** should create

awareness among lawyers on this topic. It should promote their training and provide them with tools to protect children's rights in the most appropriate way possible.



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