

Contents

FOREWORD	3
PROMISING PRACTICES	8
ABBREVIATIONS AND ACRONYMS	9
HOW TO USE THIS HANDBOOK	11
1 WHAT DOES ACCESS TO JUSTICE MEAN?	15
Key points	16
2 A FAIR AND PUBLIC HEARING BEFORE AN INDEPENDENT AND IMPARTIAL TRIBUNAL AND OTHER BODIES	23
2.1. Accessing justice through courts	25
Key points	25
2.1.1. Right of access to a court	25
2.1.2. Definition of 'tribunal'	30
2.2. Independence and impartiality of tribunals	34
Key points	34
2.3. What is a fair and public hearing?	40
Key points	40
2.3.1. A fair hearing	40
2.3.2. A public hearing	45
2.4. Other paths to justice	48
Key points	48
2.4.1. Non-judicial bodies	48
2.4.2. Alternative dispute resolution	50
3 LEGAL AID	57
3.1. Legal aid in non-criminal proceedings	58
Key points	58
3.1.1. Scope of application	59
3.1.2. Financial and merit tests	63
3.2. Legal aid in criminal proceedings	66
Key points	66
3.2.1. Scope of application	66
3.2.2. Financial means test	68
3.2.3. Interests of justice test	69

4	RIGHT TO BE ADVISED, DEFENDED AND REPRESENTED	73
4.1.	Right to be advised, defended and represented in non-criminal proceedings	74
	Key points	74
4.1.1.	Scope of application	75
4.1.2.	Practical and effective legal assistance	76
4.2.	Right to be advised, defended and represented in criminal proceedings	78
	Key points	78
4.2.1.	Scope of application	78
4.2.2.	Quality of legal assistance	83
4.2.3.	Legal assistance of one's own choosing	84
4.2.4.	Adequate time and facilities to prepare one's defence	85
4.2.5.	Waiver	87
4.3.	Right to self-representation	89
	Key points	89
5	RIGHT TO AN EFFECTIVE REMEDY	91
5.1.	What is an effective remedy?	92
	Key points	92
5.1.1.	Substantive and procedural requirements of an effective remedy	93
5.1.2.	Institutional requirements of an effective remedy	99
5.2.	Examples of specific remedies	101
	Key points	101
5.2.1.	Compensation	102
5.2.2.	Specific performance	106
5.2.3.	Injunctions	107
6	LIMITATIONS ON ACCESS TO JUSTICE IN GENERAL	111
6.1.	Legitimate aim and proportionality	113
	Key points	113
6.2.	Examples of restrictions before a final judgment or decision	116
	Key points	116
6.2.1.	Court fees	117
6.2.2.	Excessive formalism	119
6.2.3.	Evidence barriers	122

6.2.4. Limitation periods	124
6.2.5. Immunities	126
6.3. Delay in the execution of final judgments	128
Key points	128
7 LIMITATIONS ON ACCESS TO JUSTICE: LENGTH OF PROCEEDINGS	133
7.1. Determining the length of proceedings	134
Key points	134
7.1.1. Determining the length of non-criminal proceedings	136
7.1.2. Determining the length of criminal proceedings	138
7.2. Criteria determining the reasonableness of the length of proceedings	139
Key points	139
7.2.1. Complexity of the case	142
7.2.2. Conduct of the complainant	143
7.2.3. Conduct of the domestic authorities	144
7.2.4. What is at stake for the complainant	146
7.3. Remedies for excessively lengthy proceedings	147
8 ACCESS TO JUSTICE IN SELECT FOCUS AREAS	149
8.1. Persons with disabilities	151
Key points	151
8.1.1. Access to justice	152
8.1.2. Capacity	155
8.2. Victims of crime	157
Key points	157
8.3. Prisoners and pre-trial detainees	163
Key points	163
8.3.1. Access to a court and a lawyer	164
8.3.2. Right to challenge a deprivation of liberty	166
8.3.3. Compensation for unlawful detention	171
8.4. Environmental law	172
Key points	172
8.5. E-justice	177
Key points	177
FURTHER READING	181
CASE LAW	191
INDEX	199