



Committee on the Rights of the Child
ohchr-crc@un.org

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LETTER

Submission to the Committee on the Rights of the Child on its General Comment No. 27

1. Introduction

The Norwegian National Human Rights Institution (NIM) is grateful for the opportunity to submit input to the work of the Committee on the Rights of the Child on a new General Comment on children's rights to access to justice and effective remedies.

NIM is an independent public body established by the Norwegian Parliament to strengthen the implementation of human rights in Norway.¹ According to the mandate laid down in law, we may participate in international cooperation to promote and protect human rights. Children's rights are a key focus within our mandate and are among our current priorities.

NIM welcomes the Concept Note and the proposed General Comment on access to justice and effective remedies for children. We will expand on specific topics to be considered in the development of the General Comment. Our input at this stage is limited to the following overarching issues.

2. Anchoring the right to an effective remedy and access to justice

The absence of a specific provision explicitly stating the right to an effective remedy or access to justice highlights the need for the Committee to clarify its interpretation of the Convention and the reasoning behind its conclusions. In previous General Comments, the Committee appears to interpret the right to an effective remedy as part of the general obligations for State Parties outlined in

¹ NIM has 'A status' accreditation with the Global Alliance of National Human Rights Institutions ([GANHRI](#)), which means we comply with the requirements of independence, impartiality and integrity under the [Paris Principles](#).

Article 4 of the CRC. However, this interpretation has not been thoroughly explained in the CRC's General Comments to date. In General Comment No. 5, the Committee mentions that the right to an effective remedy is "implicit in the Convention" but does not provide further elaboration. This interpretation is, however, reaffirmed in subsequent Committee documents, including the Concept Note for the upcoming General Comment 27.

Although there is support for interpreting the CRC as providing children with a right to an effective remedy on various legal grounds, including the adoption of the Optional Protocol on a Communications Procedure (OPIC), NIM emphasizes the importance of the Committee explicitly basing its interpretations in the wording of the CRC, in line with the method outlined in Articles 31-33 of the Vienna Convention on the Law of Treaties. We believe that applying a methodology based on the authoritative rules of treaty interpretation will lend greater weight to the Committee's interpretations, both internationally and in the domestic application of treaty obligations. Since not all parties to the CRC are parties to the OPIC, it is in our view, essential for the right to an effective remedy and access to justice that these rights can be firmly based in the CRC itself. NIM believes that Article 4 of the CRC may be the correct legal basis as it encompasses the obligation to take all appropriate measures but calls upon the Committee to elaborate as outlined above.

Other major global and regional human rights treaties, such as the International Covenant on Civil and Political Rights (ICCPR) Article 2(3), the Convention on the Rights of Persons with Disabilities (CRPD) Article 13, and the European Convention on Human Rights (ECHR) Article 13, explicitly include the right to an effective remedy or access to justice in specific provisions. These treaties also apply to children, and case law, treaty body interpretations, and commentary from these instruments can contribute to the understanding of various aspects of children's access to justice. However, it is important to recognize that, since these treaties are not specifically focused on children, they do not necessarily bring the same focus on children's rights as the CRC does. A child-friendly approach often necessitates adjustments in the structure of remedies. Additionally, it should be noted that some cases concerning children brought before other treaty bodies and courts may primarily reflect the interests of the child's parents. For instance, in certain child welfare cases before the European Court of Human Rights (ECtHR), the Court has, in some instances, allowed a parent to represent their child, while in others, it has denied this kind of representation.²

² See for example *Strand Lobben and others v. Norway* (37283/13), *E.M. and others v. Norway* (53471/17).

Finally, we encourage the Committee to draw upon non-legally binding sources that may provide valuable insights on various topics related to access to justice when drafting the General Comment. Examples include the 2013 Human Rights Council report on access to justice (HRC Report (2013)),³ and the Council of Europe Guidelines on Child-Friendly Justice (CoE Guidelines).⁴ While these sources are not legally binding, they can offer the Committee an overview of specific issues that may arise in relation to children's access to justice.

3. The structure of the domestic complaints mechanisms, including the role of NHRIs and Children's Ombudspersons

The Committee indicates in the Concept Note that the General Comment will highlight the need to establish complaints mechanisms accessible to all children in all settings “and the role of national human rights institutions in that regard.”⁵

NIM would like to emphasize the importance of child-friendly, accessible and efficient complaints mechanisms. However, considering the diversity of systems and structures across different jurisdictions, there should be flexibility in designing the various remedies available for addressing complaints related to child rights violations. As confirmed by case law from the ECtHR, it is the aggregate of remedies provided for under domestic law that are to be considered.⁶ This means that, collectively, the available mechanisms should ensure that children have access to an effective remedy.

Regarding the role of National Human Rights Institutions (NHRIs) and Children's Ombudspersons, NIM agrees that these institutions can serve as independent institutions that contribute to the investigation of human rights violations, as noted by the Human Rights Committee.⁷ NIM also supports the CRC Committee's encouragement for State Parties to establish such institutions, as elaborated in the Committee's General Comment No. 2.

³ Access to Justice for Children. Report of the United Nations High Commissioner for Human Rights (2013) A/HRC/25/35.

⁴ Guidelines of the Committee of Ministers of the Council of Europe on child-friendly justice, adopted by the Committee of Ministers of the Council of Europe on 17 November 2010.

⁵ Concept Note para. 12.

⁶ *Kudla v. Poland* (30210/96), § 157, *Silver and others v. the UK* (7136/75), § 113.

⁷ Human Rights Committee General Comment no. 31, para. 15.

However, NIM would like to emphasize that according to the Paris Principles, it is not mandatory for NHRIs to be empowered to receive and investigate individual complaints of human rights violations.⁸

While NIM recognizes the benefits of mandating a single body to handle complaints from children, creating a "one door in" approach, we believe this could present challenges in certain jurisdictions. Children's rights issues encompass a wide range of topics, often requiring the expertise of specialized and highly skilled professionals. Consolidating all these matters into a single office could make it challenging to ensure the necessary expertise is adequately represented.

We believe that the most important consideration in designing a system of domestic remedies for children is to ensure that these remedies are accessible and child friendly. They should also be staffed with specially qualified professionals who have the resources and experience to investigate different matters. A well-functioning system for domestic remedies for children should be adapted to the relevant domestic legal order. A potential solution could involve mandating NHRIs and/or Children's Ombudspersons to receive complaints from children and then guide and assist them in reaching the appropriate body, without having the authority to issue binding decisions in those cases.

4. Procedural rights for children

4.1 Introduction

The Concept Note mentions that the General Comment will address children's procedural rights, including legal capacity.⁹

NIM would like to comment on two specific topics related to children's procedural rights: the question of procedural capacity and the issue of adequate representation when a child cannot exercise procedural capacity themselves. These issues are significant challenges in realizing children's access to justice today, yet there is limited guidance on them in case law and commentary.

4.2 Procedural capacity, including the power to file complaints

⁸ Principles relating to the Status of National Institutions (The Paris Principles). Under the section "Additional principles concerning the status of commissions with quasi-jurisdictional competence", the Paris Principles states that "[a] national institution **may be authorized** to hear and consider complaints and petitions concerning individual situations" (emphasis added).

⁹ Concept Note para. 13 and 17.

The ability to exercise procedural capacity, which includes filing complaints, initiating lawsuits, and taking further legal action, is crucial for the enjoyment of the right to access justice. However, for children, this right is not straightforward, as they often lack the ability or power to exercise it independently. While international law generally accepts that others may act on behalf of children to exercise their right to access justice,¹⁰ several sources highlight that children's lack of procedural capacity and their dependence on their parents can be significant obstacles to their access to justice.¹¹

As highlighted in the Human Rights Council's 2013 report, the criteria for granting procedural capacity to children vary significantly across different jurisdictions.¹²

While it is important to allow State Parties a margin of appreciation in determining these conditions, we urge the Committee to offer guidance on this issue. Such guidance should strike a careful balance between the child's right to self-determination, the need for assistance, and the right to protection. It is crucial to recognize that certain legal processes can be financially burdensome, difficult to comprehend or even intimidating for children, and that it is not always in the best interest of the child to grant full procedural capacity.

In its considerations on procedural capacity, the Committee should also address the need for coherence within domestic legal systems regarding the various age limits for self-determination and the ability to exercise procedural capacity in related areas. The Committee has consistently recommended State Parties to grant children the right to self-determination in different contexts, such as the right to consent to medical treatment or to decide whether or not to join organizations.¹³ However, if a child is unable to file a complaint concerning, for instance, inadequate or lack of health treatment without their parents' consent – despite having the right to make decisions about health matters – the right to self-determination becomes only partial. This scenario may compel children to disclose information to their parents that they are entitled to keep confidential.

Therefore, the Committee's guidance should emphasize the importance of aligning age limits and conditions for procedural capacity with the recognized rights to self-determination, ensuring that children can fully exercise these rights without unnecessary contradictions or limitations.

¹⁰ T.A. and others v. The Republic of Moldova (25450/20) § 33.

¹¹ HRC Report (2013), para. 38, CoE Guidelines Rule 37.

¹² HRC Report (2013), para. 37.

¹³ General Comment No. 20 para. 39.

4.3 The right to adequate representation

Even if children are granted procedural capacity to a greater extent, State Parties must also provide solutions for cases where children lack this power or are unable to exercise it. In such instances, the starting point should be that the child's parents are responsible for exercising the child's procedural capacity, as per Articles 5 and 18 of the CRC.

For most children, parents play a positive role in facilitating their access to justice.¹⁴

Nonetheless, there are circumstances where the interests of parents and children do not align, necessitating alternative solutions in situations where it is not in the best interest of the child to be represented by their parents. This misalignment may occur, for example, when parents have their own interests at stake, such as in cases of child protection and child welfare.

In the view of NIM, the Committee should consider elaborating on the necessity for complaints mechanisms and courts to appoint a *guardian ad litem* in cases where representing the child by their parents is not in the child's best interest. This also applies when the decision-making body is informed that the child is unable to obtain the required consent to file a complaint from their natural parent, yet it is deemed in the child's best interest to have the case reviewed.

5. The need for a child-sensitive approach to formal requirements, including the issue of statutes of limitations

A child-sensitive approach to access to justice necessitates careful consideration of the formal and procedural rules that should apply. The Committee should consider providing guidance to State Parties on adopting a child-sensitive approach to formal requirements in cases involving children. One proposal could be that courts and complaint mechanisms should be mandated, or at least encouraged, to assist children in meeting formal requirements such as those relating to the format and content of complaints rather than rejecting cases that do not initially comply.

In this regard, the Committee should also consider commenting on the necessity of adjusting statutes of limitation in cases involving children. As demonstrated by case law from ECtHR, statutes of limitation can present significant barriers for children to

¹⁴ HRC Report, 2013, para 20.

having cases considered.¹⁵ NIM suggests that to meet the requirements for access to justice, statutes of limitation should at least not commence until the child is empowered to file complaints or lawsuits independently.

Furthermore, children may not be aware that they may be victims of human rights violations until considerable time has passed.¹⁶ In the view of NIM, the Committee should consider urging State Parties to ensure that statutes of limitation do not begin running before the child reaches the age of majority and extends even some time thereafter, even in cases where children are granted the right to file complaints independently.¹⁷ This approach would help ensure that children have a fair opportunity to seek a remedy for violations of their rights.

Best regards

for the Norwegian Human Rights Institution

Adele Matheson Mestad
Director

Kirsten Kolstad Kvalø
Senior Advisor

¹⁵ *Stagno v. Belgium* (1062/07). In this case, two minor sisters were barred from accessing the courts because of their status as minors, but by the time they reached majority, the case was barred due to prescription rules. The ECtHR found that strict application of statutory limitations had prevented the applicants from using the remedy available.

¹⁶ In *Stubbings v. the UK* (22095/93), the ECtHR remarked on the "developing awareness in recent years of the range of problems caused by child abuse and its psychological effects on victims." It noted that "it is possible that the rules on limitation of actions applying in member states of the Council of Europe may have to be amended to make special provision for this group of claimants in the near future."

¹⁷ This is in line with the CoE Guidelines Rule 36, stating that access to court should be granted for a period of time after the child have reached the age of majority where necessary, and further encourages states to review their statutes of limitations.