

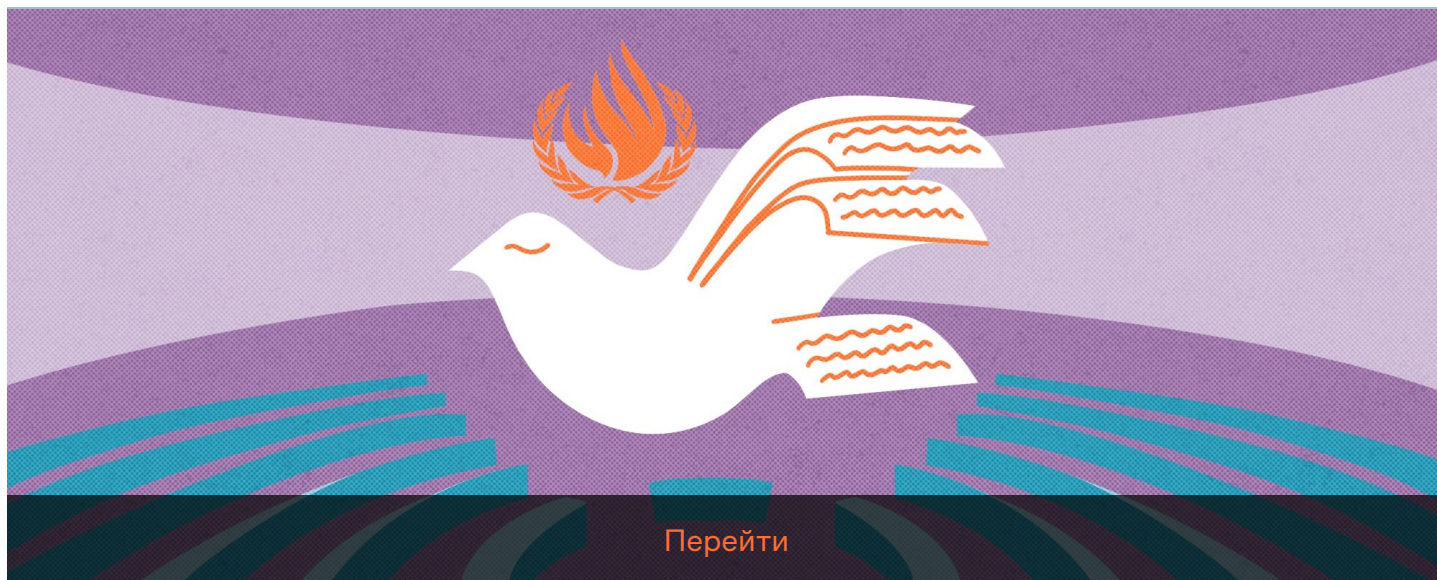


Illustration: Mira Ogay for OVD-Info

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Children's access to justice: report to the Committee on the Rights of the Child

Submission on draft general comment No. 27 on children's rights to access to justice and effective remedies.

[Текст на русском](#)

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This submission is prepared by [Memorial Human Rights Defense Center](#), [Anti-Discrimination Centre Memorial](#) and [OVD-Info](#) for the draft comment No. 27 of the Committee on the Rights of the Child.

I. BARRIERS TO CHILDREN'S ACCESS TO JUSTICE IN THE CONTEXT OF TRADITIONAL HARMFUL PRACTICES

Children face significant challenges in accessing justice when crimes against them are not explicitly defined in national

legislation but are instead covered by general laws that fail to consider a child's age and gender. This gap leaves children without effective legal remedies.

In many countries, girls do not have effective remedies in cases of traditional harmful practices, including female genital mutilation (FGM). In particular, Russian Criminal Code (hereinafter — CC) does not provide for criminal liability for FGM. In such cases, the authorities rely on general provisions such as Articles 115 (minor harm to health), 112 (moderate harm to health) and 111 (serious harm to health) of the CC. However, only Articles 115 and 112 provide that causing harm to a minor constitutes an aggravating circumstance. In the only case that went to court, the doctor who performed FGM against a girl was charged under Article 111 of the CC and was given an insignificant fine. Moreover, despite the fact that the doctor was found guilty, the statute of limitations for this article was 2 years, which expired by the end of the trial, meaning that the doctor was released from liability.

Traditional customs that exist in different countries may themselves be barriers to children's access to justice as they endorse and normalize such harmful practices, including FGM, early forced marriages (usually religious marriages that do not require state registration) and traditional practice of taking children away from their mothers after divorce or the death of the husband on the ground that «children belong to the father's clan». In such cases, the opinions of children are not taken into account and their best interests are not respected.

Such cases rarely reach courts because these harmful practices are often done with parental consent. Children may not report these crimes to avoid family repercussions or because they do not realize they are criminal. Even if they do, short statutes of limitations often prevent justice. When cases do reach court, traditional customs may influence

judicial decisions, and officials may hesitate to enforce rulings that contradict these customs.

The lack of strong legislation protecting children from specific harmful practices, combined with customs normalizing them, significantly hinders children's access to justice, especially when parents or guardians are involved.

Recommendations:

- legislation of states should provide for liability for specific crimes against children, as opposed to the use of common articles that do not take into account the vulnerable position of a child;
- all traditional practices and customs that are harmful to children should be banned and those responsible should be held accountable, including parents and other relatives;
- states should prevent courts and other government bodies from making decisions based on traditional practices and discriminative customs that violate children's rights;
- statutes of limitations for crimes against children should either be abolished or significantly extended, starting from the moment the child reaches 18 years of age;
- states should ensure that children of all ages can appeal to authorities independently or with adult assistance when their rights are violated by parents or other legal representatives. Third parties witnessing such violations, including NGOs and other independent bodies, should be able to report them and represent the children in court;
- states must ensure that schools and other relevant institutions for children have special classes and other programs with the aim to provide information about the legal and other mechanisms available to protect their rights. The format and content of information should be adapted to the child's age.

II. ACCESS TO JUSTICE FOR CHILDREN BELONGING TO VULNERABLE GROUPS

There is a general problem with access to justice for children who are unable to represent themselves in courts (in many countries these are all children under 18, in some — under 16 or even 14). These children can be represented only by their parents (legal representatives) or the state (acting in the interest of the child). However, vulnerable groups and families of migrants, stateless persons and minorities are often unable to protect the rights of their children. They either cannot go to court (if they have no documents or they are in an irregular situation, etc.), or they are too dependent on the state to oppose it in court. For example, Roma families who claim discrimination against their children in state schools might be at risk of losing their homes due to forced eviction by authorities. These families often have to give up the court-case, choosing to keep their housing instead of providing education for their children. Meanwhile, the state will not protect children in cases, when the children's rights are violated by the state itself. This often concerns migrant children, children from minorities, children with special needs, children in institutions and others.

Recommendation:

- states must enable children vulnerable to discrimination to access justice with the support of human rights defenders, NGO's and independent legal experts without direct participation of their parents.

III. THE ACCESS TO JUSTICE AND EFFECTIVE REMEDIES OF THE CHILDREN DISPLACED DURING THE ARMED CONFLICT

During wars, children are often displaced from war zones and occupied territories, including into the territory of the occupying state. Children, their relatives and the state of birth face political, logistical, financial and security barriers related to the return of children. Children often lack effective mechanisms to appeal against long-term displacement and to protect their rights during short-term displacement.

For example, after the start of Russia's full-scale invasion of Ukraine in 2022 and the following occupation by Russia of the additional parts of the Ukrainian territory, many Ukrainian children were displaced from the occupied territories to Russia. Some of these children were later returned home by their parents under the condition that they had to come to Russia. However, some children had no parents who could come to Russia because of the war or logistical and financial barriers.

In 2023, the Ukrainian Government granted the right of legal representation to other relatives (grandparents, older siblings etc.) of children transferred to Russia. These relatives also had to come to Russia to return the displaced children.

This example represents a possible solution for the issue of legal representation of displaced children. However, a problem may still arise if the country of origin provides these rights of legal representation, but the government of the country where the child is located does not recognize these rights.

Ukrainian children who had no relatives who could come to Russia were forcibly placed in Russian families or Russian special institutions for children (orphanages) where they

were educated as Russian citizens and patriots. These children had **no effective remedies**, including no possibility to apply against this practice to the courts.

Recommendations:

- states must inform children displaced from the occupied territories of their right to preserve their citizenship of birth and to be educated in their native language and of the mechanisms available to protect their rights at the national level;
- states must protect children displaced from the occupied territories against the political propaganda about their state of birth and provide them with effective remedies to challenge it;
- states must take into account childrens' opinion on the issue of their citizenship, identity and return to the motherland while considering their cases before national institutions;
- states should create a mechanism for returning children to their parents without the physical presence of the parents during the consideration of the case in the occupying state;
- states should recognize as representatives of the child in national courts and institutions not only the child's parents but also other relatives and legal representatives from the state of birth;
- states should promote the bilateral agreements between countries regulating the status of children in a cross-border situation, the rights of legal representatives, access to justice and the exchange of information related to these children. In some cases, the children's rights could be represented by the country of origin (state).
- states must inform the state of birth of the child about the displacement and take into account the view of this state about the child's return while considering the case before the national institutions. This rule should be applicable during the state of war and other military disturbances.

IV. ACCESS TO INFORMATION AS A PREREQUISITE TO EFFECTIVE ACCESS TO REMEDIES

Access to information is fundamental for children to effectively use their rights and access remedies. When children are denied access to critical information, it can lead to denial of justice. This is particularly true in cases where states impose blanket prohibitions on certain types of information, such as those related to medical procedures — gender transition — or so-called «LGBTQ propaganda for children.» Such restrictions not only hinder children's understanding of their rights but also prevent them from accessing the medical, psychological, and legal support they may need.

One of the most glaring examples is the amendment to Russian law «on protecting children from information harmful to their health and development» aimed against «denial of traditional family values to minors.» This law was adopted under the pretext of protecting children from harmful information and LGBTQ propaganda in 2013 but has since morphed into a prohibition of any non-negative coverage of LGBTQ issues. In 2022, a bill expanded the gay propaganda law to cover any age group and added materials that give minors a «desire to change their gender» to the prohibited categories. This showcases how blanket bans on information for children can be a first step toward wider censorship and often are motivated not by protection of children but by discriminatory attitudes.

These laws introduce significant uncertainty about how, if at all, minors can be approached regarding issues of sexual orientation and gender identity. LGBTQ youth are a particularly vulnerable group in relation to mental health and suicide risks, and laws prohibiting «propaganda» severely restrict the ways these issues can be addressed and

prevented. These laws not only limit children's access to information about their sexual orientation or gender identity but also restrict their access to psychological help, medical and legal advice. Consequently, children cannot be effectively informed on the issues related to LGBTQ in medical or legal context and cannot effectively challenge the lack of medical and psychological support.

These laws hinder the creation of issue-specific remedies for youth in educational settings and endanger NGOs and practitioners working with LGBTQ youth, who are already vulnerable. With perpetrators often being their legal representatives, LGBTQ children may struggle to access support, especially if information related to their sexual orientation or gender identity is restricted. Such prohibitions prevent access to necessary help and limit children's ability to defend themselves in court. Moreover, a one-size-fits-all approach to information restrictions is inappropriate; instead, a tailored approach based on age and maturity should be adopted.

The Russian «propaganda» law was a catalyst for several remarkably similar laws around the world — e.g. [Kyrgyzstan](#), [Georgia](#). Russian harmful practices have also been reflected in the legislation of European countries: in 2021, a similar law was passed in [Hungary](#), and in August 2024, a comparable law was adopted by the [Bulgarian parliament](#) and approved by the country's [president](#).

Recommendations:

- states should consider establishing commissions or advisory bodies to carefully evaluate how prohibitions and restrictions on certain information can affect children and if it will harm them. These bodies should aim to contain education workers, psychologists and medical practitioners rather than governmental officials. These bodies should ensure that children receive age-appropriate information, particularly regarding medical procedures related to gender transitioning and psychological support;
- states must refrain from blanket prohibitions on the dissemination of information to children, particularly in areas related to health, identity, and well-being. By ensuring that children receive the information they need, in a manner appropriate to their age and circumstances, children can get an effective access to available remedies, including judicial.

V. INEFFECTIVENESS OF NATIONAL INSTITUTIONS IN SAFEGUARDING CHILDREN'S ACCESS TO JUSTICE AND LEGAL REPRESENTATION

Many countries have various national institutions for the protection of children's rights, but the lack of independence due to funding and appointment procedure, as well as real opportunity to influence government decisions, makes them ineffective in ensuring children's access to remedies.

For instance, Russia has two main institutions for protecting children's rights: the Federal and Regional Children's Ombudspersons, supported by administrative apparatus. The Federal Ombudsperson is appointed by the president, and regional ones by local legislative bodies, all funded by the government. These government-affiliated officials often fall short compared to independent NGOs, which, being more connected to grassroots communities, offer more targeted

and effective aid. Overwhelmed with paperwork and lacking specialized skills, the Ombudspersons are unable to work directly with children. Currently, there is no direct mechanism for children in Russia to file complaints, receive legal advice, or obtain court representation through the Ombudsperson.

In 2022, the Federal Children's Public Council (CPC) was established as an advisory body under the Federal Ombudsperson for Children's Rights to involve children in decision-making on issues affecting their interests. The federal CPC consists of chairpersons from regional CPCs, aged 14 to 20, who participate voluntarily. Candidacies are proposed by regional ombudspersons. However, CPC operations are somewhat opaque: while each maintains a social media presence, there are no websites or public reports on their activities. These CPCs are not intended to gather information, address complaints, or represent children in court.

Russian legislation also establishes Commissions on Minors' Affairs and Protection of Their Rights — collegial bodies in every region, created by local supreme executive bodies. These Commissions are intended to prevent neglect, homelessness, juvenile delinquency, and antisocial behavior, and to safeguard children's rights. However, in practice, they function more like governmental bodies substituting courts for minors who commit misdemeanors (as minors **cannot be tried** by regular courts). Due to insufficient staffing and a lack of specialized training in areas like psychology, pedagogy, and criminology, these Commissions **struggle** to conduct individualized preventive work with teenagers and juvenile offenders.

It should be noted that **other countries** in the Eastern European and Central Asian regions also face similar problems, including lack of specialized professional skills among employees and the absence of child-friendly mechanisms.

Recommendations:

- states must ensure the children's rights Ombudsperson's independence and allow its direct intervention in cases where children's rights might be at risk, as well as grant the Ombudsman enhanced investigative powers, particularly in monitoring the implementation of the Convention across various government levels;
- states should introduce child-friendly and gender-sensitive procedures and processes in aforementioned institutions;
- states should shift direct work with children from government employees to independent professionals, including those from NGOs and professional organizations (e.g., lawyers, doctors). These experts could form an independent Council to the Ombudsperson, handling specialized care, prevention, complaints, and legal representation, while administrative tasks remain with government staff.