

International Social Service's Submission to the General Comment No. 27 on Access to Justice and Effective Remedies

At the [International Social Service](#) (ISS), we welcome the opportunity to contribute to the General Comment (GC) No. 27. This submission aims to explore the intersection of different child protection matters and access to justice, focusing on the specific barriers and needs of **ISS priority groups**, including **children in care settings or at risk of being so** and **care leavers, adoptees, unaccompanied and separated migrant children, children in the context of family conflicts** and **children born through surrogacy**.

Our submission draws on extensive casework experience and practical insights from [ISS members worldwide](#).

1. Definition and understandings of access to justice and effective remedies for children

Access to justice is a **complex** and **multi-dimensional concept** and **right**. First, it is a fundamental right that guarantees children the ability to seek and obtain just and timely remedies ([OHCHR](#), 2013, para 4). Second, as an “umbrella right”, it serves as a gateway to the protection and fulfilment of other rights ([GC No. 5](#), 2003, para 24) enshrined in the Convention on the Rights of the Child (CRC) and related human rights treaties. It is also considered as an “integral component of any good rule of law framework” as well as “a pre-requisite for sustainable development, the eradication of poverty, and greater equality” ([UNICEF](#), 2015, p. 18; [SDG 16](#)).

This dual nature of access to justice – comprising both substantive and procedural aspects – underscores its pivotal role in realising the rights of all children, particularly the most vulnerable, such as **ISS priority groups**. Access to justice is intrinsically linked to the right to non-discrimination (Art. 2), right to family life (Art. 9), information (Art. 7), identity (Art. 8), participation (Art. 12), and protection from any form of violence, neglect, abuse and exploitation (Arts. 19, 32, 34, 35 and 36).

For ISS the definition of access to justice should be based on the following key components:

- **Foundational principles of the CRC:** ensuring that the child’s best interests are a primary consideration in all actions and decisions (Art. 3), guaranteeing non-discrimination (Art. 2), upholding the right to participation (Art. 12) and recognising the child’s right to life, survival, and development (Art. 6).
- **Empowerment:** children’s right to accessible information (Art. 17) and human rights education (Art. 42), ensuring children understand their rights and the processes available to them. This also involves equipping adults with the knowledge and resources to

effectively advocate for and uphold children's rights, which helps in preventing rights violations.

- **Legal and procedural safeguards:** recognising children's legal standing to bring forward complaints and seek justice as rightsholders. It also involves creating an enabling environment by developing child-friendly and child-centred mechanisms and procedures as well as by providing effective support tailored to children's individual needs.
- **Effective remedies:** Ensuring that children can seek and obtain effective and holistic remedies through both formal and informal systems, providing adequate redress (Art. 39).
- **Accountability:** Holding "perpetrators", including individuals, institutions, and systems, accountable for actions that infringe upon children's rights. Effective accountability mechanisms not only provide remedies but also prevent future violations by addressing systemic issues and reinforcing the rule of law. This requires monitoring justice processes, adapting them to children's needs, and ensuring they remain child-centred and responsive.

2. Barriers preventing children from gaining access to justice and effective remedies

Children from ISS priority groups are at increased risk of rights violations, often resulting from the denial of essential services and development opportunities. Additionally, they face heightened barriers in accessing justice. Therefore, ensuring access to justice for these groups is crucial not only for addressing immediate violations but also for ensuring long-term equality, legal empowerment, and protection.

ISS has identified the following main barriers:

Stigmatisation and discrimination

Children often face multiple forms of discrimination based on factors such as sex, disability, race, ethnicity, colour, language, religion, national or social origin, property, birth, or other status ([OHCHR](#), 2013, para 17).

Legal barriers

- **Lack of a robust and inclusive domestic children's rights legal framework.** First, many domestic legal frameworks fail to effectively recognise and enforce fundamental rights for children. And even where legal texts appear supportive, significant implementation challenges persist. Second, there is insufficient and inadequate recognition of access to justice as a child's right under domestic law. This undermines children's ability to seek redress effectively and equitably across legal systems. Migrant children, especially those who are unaccompanied or separated, are often excluded from this right.
- **Limited access to international remedies once domestic avenues have been exhausted.** The limited ratification and implementation of the [Third Optional Protocol to the CRC](#) (OPIC) is a good example. While 196 States are parties to the CRC, [only 52 have ratified the OPIC](#), and many of which struggle with effective implementation.
- **Difficulty or impossibility for children to initiate legal proceedings independently.** This issue is particularly relevant for institutionalised children where the absence of a

legal guardian or the dependency on state-appointed guardians can severely restrict their access to justice. The lack of a guardian *ad* responsible for representing the child's best interests in legal proceedings, further exacerbates this challenge for many children in civil and penal procedural matters.

- **Time-related challenges**, including delays in legal proceedings and restrictive prescription periods or statutes of limitations ([Martin, Lisa. \(2022\)](#), p. 618). These can disproportionately affect children who may not have the resources or capacity to pursue claims immediately. Prolonged legal procedures may result in children aging into adulthood before their cases are resolved, losing access to child-specific protections and support services. This is particularly relevant for adoptees, donor-conceived persons or children born through surrogacy searching for their origins, as time limits can delay, prevent or restrict access to crucial information about their biological families and/or birth and adoption processes. Such barriers not only hinder their ability to secure their rights but also exacerbate the inherent complexities and lifelong impacts of their experiences, deeply affecting their identity formation, mental health and personal relationships. For adoptees who discover their [adoption was illegal](#), the situation is even more challenging, as it involves significant human rights violations and adds further obstacles to seeking justice at both national, regional and international levels.

Socio-cultural barriers

- Traditionally in most, if not all, societies, **children have not been regarded as rights holders** ([GC No. 5](#) (2003), para. 66). By seeing children merely as “dependents” (*idem*, para 24) their ability to seek and obtain justice is significantly compromised.
- **Social pressure and stigma against reporting rights violations**. In many countries, there is a prevailing reluctance to disclose or address instances of violence or abuse due to fear of shame, judgment, or retaliation. This social stigma can discourage both children and those representing and/or supporting them, from seeking help, thereby perpetuating cycles of neglect and violence.
- **Normalisation of violence, especially against vulnerable groups of children**. In many institutions, such as residential care facilities, whether public or privately-run, violent disciplinary practices are often ingrained and accepted as standard. This reinforces a culture where violence against children is normalised, with monitoring and complaint mechanisms that are often non-existent, weak or ineffective. Children with psychosocial or intellectual disabilities are particularly vulnerable in these settings due to their increased dependency and isolation. Furthermore, in such environments children are at a heightened risk of being trafficked, either into or out of the institutions, or when transitioning out of care (see joint thematic submission on institution-related child trafficking). This not only applies to children in alternative care settings but also those placed in other structures such as boarding schools, special education schools, school hostels, reception centres and treatment centres, where in practice a lack of child-rights-approach and grave rights violations prevail ([UNICEF, 2024](#)). All these systemic failures create additional barriers to justice by embedding violence and harmful practices within institutions that are supposed to protect and support children.

- **Unacceptability of discussion of “family problems” outside of the family.** In many societies, there is a strong cultural norm against discussing family issues or conflicts with “outsiders”. This can prevent children from seeking help or reporting abuse, as doing so might be seen as bringing shame or dishonour to the family. This cultural barrier reinforces the isolation of children who are experiencing abuse or neglect, making it difficult for them to access justice or support outside of their immediate family context. For children in kinship care settings, this issue can be pronounced, due to often complex intra-family dynamics and the frequent absence of accessible support schemes to children and caregivers.

Practical and financial barriers

- **Absence of adequate and accessible information about rights and available remedies,** both for children and adults, prevents effective pursuit of justice and helps perpetuate rights violations.
- **Lack of data and research on vulnerable groups,** such as children born through surrogacy. The absence of comprehensive information and studies means that professionals and justice systems lack the necessary insights and understanding to address their unique needs and challenges effectively.
- **Lack of child-friendly and child-centred procedures and systems within both the justice and broader support structures.** The design and functioning of justice systems themselves can present substantial barriers for children’s meaningful participation in different proceedings. Justice processes may be intimidating, lack transparency, overly complex, or not designed with children’s needs in mind, potentially resulting in environments that are unsafe, stigmatising, or discriminatory towards children and even more so, to certain vulnerable groups of children ([Liefwaard, Ton. \(2019\)](#)). This may also end up eroding children’s confidence in the justice system ([OHCHR, 2013, para 15](#)). Such systemic inadequacies can further marginalise unaccompanied and separated migrant children who may face cultural and language barriers.
- **Lack or insufficiency of specialised training for professionals working within the justice and other support systems.** Without proper training, professionals may lack the skills necessary to interact with and support children effectively.
- **Lack of coordination between various systems involved in child protection,** such as social services, education, healthcare, and the judiciary. This disconnect often leads to gaps in care, inconsistent responses, and missed opportunities for early intervention, which can severely hinder a child's ability to access justice and receive the necessary support for certain vulnerable groups, such as migrant children, victims of trafficking and children with disabilities in care systems.
- **Physical barriers also impact access to justice.** The location and accessibility of courts can be challenging, particularly for children with disabilities, those living in remote areas, or those living in isolated or closed-type institutions.
- **Imposition of prohibitive legal costs upon children and adults** supporting and/or representing them and the limited availability of free legal aid. The financial burden can be particularly overwhelming for care leavers, who face limited resources and a lack of support as they transition to independence.

3. Enabling factors

ISS priority groups need tailored support to navigate justice systems. To address their unique challenges, ISS provides the following recommendations for States:

Foundational principles of the CRC:

- Develop and enforce a comprehensive and inclusive legal framework that guarantees robust protections against rights violations and provide clear legal avenues for redress when rights are infringed.
- Eradicate discriminatory laws, policies, and practices, and take affirmative measures to ensure that all children are entitled to equitable access to justice.
- Uphold children's right to participation in all matters affecting them, including any administrative or judicial proceeding. Special emphasis should be placed on ensuring this right is respected in proceedings initiated by others, such as those involving parental separation, adoption, or other decisions that have a significant impact on the child's life ([GC No. 12](#) (2009), para 33).
- Foster better coordination among the various sectors involved in child protection to ensure a holistic and cohesive approach to justice for children.

Empowerment:

- Encourage the wider ratification and effective implementation of international instruments, like the OPIC. This would ensure that children have access to international remedies when domestic avenues are exhausted, providing an additional layer of protection and justice.
- Implement comprehensive rights education programmes and awareness raising initiatives in all care settings, including residential care facilities, family environments and communities.
- Promote culturally sensitive approaches in justice processes, particularly for migrant children and those from diverse backgrounds, ensuring that their specific needs and contexts are understood and respected.
- Regular, specialised training programmes should be implemented for professionals within the justice and other support systems. This training should focus on child rights, child-friendly practices, and their unique needs.
- Civil society play a vital role in child protection and access to justice by advocating for children's rights, holding governments accountable, and providing support to children and families. Engaging with CSOs strengthens collaboration, ensures accountability, and makes child protection systems more responsive and effective.

Legal and procedural safeguards:

- Specialised child-friendly mechanisms dedicated to handling cases involving children, where the environment is supportive and designed to prioritise the child's well-being and best interests. As the [UN Guidelines for the Alternative Care of Children](#) establish (98),

children in care should have access to a known, effective and impartial mechanism to notify concerns or complaints regarding their treatment or conditions of placement.

- Complaint processes should be simplified and made more transparent, with clear, understandable language tailored to children's needs.
- Provide or increase free legal aid services specifically tailored to children, ensuring that financial barriers do not prevent them from accessing justice. This becomes essential to breaking the cycle of poverty-driven family separation – still prevalent in most countries. Providing free representation and counselling can address family breakdown, support reunification, and ensure access to justice without financial burdens. The State should cover these costs to ultimately uphold children's right to stay with their families whenever possible.

Effective remedies:

- Remedies should be child-centred and provide a real opportunity for addressing violations and receiving appropriate and tailored forms of redress.
- Sufficient resources must be mobilised to implement and sustain access to justice frameworks effectively and provide effective remedies, at local, national and international levels ([GC No. 19](#) (2016), para 21). Adequate funding for the UN human rights system is crucial to supporting the monitoring and implementation of children's rights. This ensures that bodies like the Committee on the Rights of the Child have the resources to provide guidance and address violations (see [joint letter](#) coordinated by Child Rights Connect).

Accountability:

- Integrate accountability into complaint mechanisms by ensuring transparent and thorough investigations and clear consequences for violations. In cases of [illegal adoptions](#), it is essential to conduct thorough and impartial investigations, even without formal complaints. Additionally, accountability measures should include reviewing and reforming adoption procedures to prevent future abuses.
- Businesses and private actors, especially those involved in care and adoption processes, should respect and support children's rights. Additionally, ensure that criminal legislation, as required by the [Optional Protocol on the sale of children, child prostitution, and child pornography](#), applies to legal entities, including business enterprises ([GC No. 16](#) (2013), para 66-70; OPSC arts. 3).
- Ensure the situation and conditions of children in care are adequately and regularly monitored to prevent violations of children's rights.
- Establish independent bodies that are accessible to children in various settings to monitor and report on the implementation of justice processes and the effectiveness of remedies ([GC No. 12](#), para 46).