



Submission to CRC General Comment No. 27 on Children's Rights to Access to Justice and Effective Remedies

Submitted by **Kids in Need of Defense (KIND)**

Introduction

1. Kids in Need of Defense (KIND) welcomes the opportunity to contribute to the Committee on the Rights of the Child (CRC) Draft general comment No. 27 on children's rights to access to justice and effective remedies. This submission focuses on the situation of **unaccompanied and separated migrant children** and is structured around key issues and guiding questions outlined in the concept note and call for submissions.¹

Definitions and understandings

2. A critical element of access to justice for unaccompanied and separated migrant children is **access to universal legal aid in all procedures that affect them**. Universal legal aid is the idea that everyone has a right to legal assistance, regardless of income, whenever they have a legal need. This includes the right to

¹ Committee on the Rights of the Child (CRC), "[Call for submissions on draft general comment No. 27 on children's rights to access to justice and effective remedies](#)", 23 August 2024.

legal advice, assistance and representation, as well as access to legal education, legal information and other services.²

3. There is a wealth of evidence that **access to legal aid is indispensable to children’s ability to access justice and effective remedies**.³ Yet alarming gaps remain in legal representation for unaccompanied and separated migrant children in formal legal proceedings. For example, in 2023, only 56% of unaccompanied children in U.S. immigration courts were represented by a lawyer.⁴ Similarly, across England and Wales, 65% of the population has no access to an immigration or asylum legal aid provider.⁵
4. While the right to universal legal aid for children in criminal cases is widely recognized as a fundamental right and “an essential element of a functioning criminal justice system”⁶ this right is less clearly understood by State Parties as applying to **administrative procedures** such as those relating to migration and asylum.
5. Such administrative procedures can include, among others:
 - a. Identification and assessment procedures at international borders;
 - b. Age assessment;
 - c. Asylum and other protection procedures;
 - d. Regularization procedures;
 - e. Relocation and resettlement procedures;
 - f. Trafficking and other victim identification procedures;
 - g. Best interests assessment and determination;
 - h. Procedures for issuing identity documents;
 - i. Family reunification procedures;
 - j. Administrative detention procedures;
 - k. Removal procedures; and
 - l. Voluntary return and reintegration procedures.
6. These procedures are not always formal legal proceedings involving a court or judge yet can have a **profound impact on the life and development of the child as well as on the future fulfilment of their rights**. Decisions in these procedures are often taken by administrative agencies or immigration officials who are mandated to enforce immigration laws rather than uphold children’s best interests.
7. Central to KIND’s mission is the belief that no child should have to face these proceedings alone. This belief is driven by the **voices and opinions of children themselves**. KIND’s unaccompanied child clients, some as young as 3 or 4 years old, have expressed feeling frightened, confused, disoriented, traumatized and alone when attempting to navigate complex and consequential immigration procedures.⁷

² UN General Assembly, UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems, para. 8, A/RES/67/187, 28 March 2013.

³ See below, “Outcome and impact”.

⁴ Romero, Laura. “[Unaccompanied minors are representing themselves in immigration court, alarming advocates](#),” ABC News, June 3, 2024.

⁵ The Law Society, “[Immigration and asylum – legal aid deserts](#)”, 21 February 2024.

⁶ A/RES/67/187, para. 14.

⁷ See KIND, [Voices That Matter Most](#).

When we went to court, I never felt alone because I had a KIND representative by my side to help me with my case.”

Erica, 15 years old

8. Due to their unique vulnerability and the potential complexity of their cases, in General Comment No. 6, the Committee made clear that “In cases where separated or unaccompanied children are referred to **asylum procedures or other administrative or judicial proceedings**, they should also be provided with a legal representative in addition to a guardian.”⁸
9. Moreover, the right to universal legal aid should be understood as **extending to all children, whether accompanied or unaccompanied**, in order to safeguard against potential family separation and ensure children’s best interests are upheld irrespective of whether their parents or guardians are entitled to legal aid or can afford legal representation.
10. For example, the Committee has noted that the right to free, qualified and independent legal representation is **a prerequisite to upholding children’s rights under Article 3⁹ and Article 12¹⁰ of the Convention**.
11. In order to be effective, legal aid should be child-centered, accessible, independent, and professional:
 - a. **Child-centered** - Legal aid provided to children should prioritize the wishes of the child based on the child’s right to be heard and to express his or her views freely.
 - b. **Accessible** – Including unhindered access of children to legal aid providers during all stages of a procedure; the ability to receive legal advice and representation in a language and format that is accessible to them, including according to their age, development and level of understanding; ensuring States allocate the necessary human and financial resources to the legal aid system; and if States apply a means test to determine eligibility for legal aid, children are always exempted from the means test;
 - c. **Independent** – Including the ability of the child to choose his or her legal aid provider; confidentiality of communications; and no State interference with the legal aid provider’s representation of the child’s best interests.
 - d. **Professional** – Including that legal aid providers are trained in trauma-informed and child-sensitive legal assistance.
12. In order to access justice and effective remedies, it is important that **migrant children must first be allowed access to the territory**, as this is a prerequisite to assessing the child’s best interests,¹¹ as well as the ability of the child to access mechanisms and procedures for complaints, remedy or redress.¹²
13. Additionally, when the State determines a comprehensive, secure and sustainable solution for the child as part of a best interests determination, it must take the child’s ability to access justice and effective remedies into account. **This may require local integration in the country of residence** with the

⁸ CRC, *General comment No. 6 (2005): Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, para. 21, CRC/GC/2005/6, 1 September 2005.

⁹ CRC, *General comment No. 14 (2013): The right of the child to have his or her best interests taken as a primary consideration*, para. 96, CRC/C/GC/14, 29 May 2013.

¹⁰ Joint general comment No. 3 (2017) of the CMW and No. 22 (2017) of the CRC: *General principles regarding the human rights of children in the context of international migration*, para. 36, CMW/C/GC/3-CRC/C/GC/22, 16 November 2017.

¹¹ CRC/GC/2005/6, para. 20.

¹² CRC/C/GC/14, para. 15(c).

possibility of the child and their families gaining access to secure residence status—either temporarily or permanently—while the child awaits the outcome of procedures for complaints, remedy or redress.¹³

Barriers

Existing barriers (legal, socio-cultural, financial, practical)

14. Migrant children face myriad barriers to accessing justice and effective remedy, including access to legal aid.¹⁴
15. Unaccompanied children arriving at international borders often have **limited understanding of immigration procedures** and have difficulty distinguishing between the various actors and agencies they encounter.
16. The often dangerous and difficult migration routes that unaccompanied children are forced to take, coupled with the trauma of family separation and exposure to violence or exploitation, can severely affect their **mental and emotional well-being**, impairing their ability to articulate their needs and wishes or to participate effectively in administrative proceedings.
17. When unaccompanied children are undocumented, they often have a real fear of **immigration detention or deportation** that may discourage them from seeking access to justice or legal aid. Furthermore, when children are detained or placed in restrictive settings, this can have significant impacts on a child's wellbeing, their ability to access legal counsel, or to prepare and participate in their legal case.
18. Exacerbating these barriers, **some States limit access to counsel for unaccompanied children** to that provided by the national child protection agency, which restricts children's access to independent legal aid. Additionally, national child protection agencies often lack the staff, infrastructure, and expertise to adequately serve the needs of unaccompanied children in their care.
19. In some national jurisdictions, unaccompanied children **lack legal capacity**, meaning they are unable to exercise their rights independent of a parent or legal guardian. In such cases, the appointment of an independent guardian is essential to enable them to access legal assistance and to secure justice.
20. In other countries non-citizens—including unaccompanied children—face **financial barriers**, as they are only entitled to legal representation at their own expense or on a pro bono basis.
21. Even if unaccompanied children are able to afford legal representation, there is often a **shortage of trained legal professionals** who are familiar with both children's rights and immigration law.
22. Finally, there is often a **lack of accessible and effective mechanisms at the local level** for filing complaints, or for seeking remedy or redress. Children who do report complaints of harm, abuse, or other rights violations may not receive information about steps taken by the State or the ultimate outcome of investigations, undermining confidence in complaint mechanisms and accountability for violations.

Discrimination and exclusion

23. Unaccompanied migrant children also face significant **structural discrimination stemming from multiple and intersecting factors**, including their age, gender, sexual orientation or gender identity, ethnic origin, nationality or statelessness, socioeconomic situation, immigration status, or lack of documentation.
24. Many do not possess the **necessary documentation** to prove their identity, age, or nationality, further complicating their ability to access services, legal representation, and justice. Without documentation,

¹³ CRC/GC/2005/6, para. 88; and CMW/C/GC/3-CRC/C/GC/22, para. 32(j).

¹⁴ See, European Council of Refugees and Exiles (ECRE), [Legal Note 16: The Guarantees of the EU Charter of Fundamental Rights in Respect of Legal Counselling, Assistance and Representation in Asylum Procedures](#), June 2024.

these children are at increased risk of exploitation, trafficking, and abuse, and are often unable to navigate complex legal systems to assert their rights.

25. Unaccompanied migrant children also face **cultural and linguistic barriers**, as they often come from different cultural and linguistic backgrounds, which can create significant communication barriers with legal representatives, and State authorities; especially for indigenous children or non-native speaking children.

Situations of armed conflict, humanitarian contexts, post-conflict and emergency situations

26. In **emergency situations and humanitarian contexts**, there can be additional challenges or delays in identifying unaccompanied and separated children and ensuring their access to legal protections provided for them under domestic, regional and international law.¹⁵ Emergency circumstances can, for example, lead to inadequate coordination among agencies, contribute to confusion, exacerbate trauma, and delay access to documentation or legal aid providers that are critical for a child's ability to access justice.
27. **Various and frequently changing border policies** that restrict access to asylum or other legal protections can also compel families to separate, or force unaccompanied children to take more dangerous journeys, putting children at risk of exploitation and abuse, causing barriers to legal aid and protection.

Enabling factors and strategies

28. **Civil society organizations, legal aid providers, and pro bono lawyers** are key actors in bridging the gap between children's legal needs and the State's capacity to meet these needs. These actors can accompany children in complex legal and administrative processes, providing information and specialized services to ensure that children understand and can actively participate in the procedures that affect them.
29. **States** can also take steps to enable greater access to justice and effective remedies, for example hiring child protection specialists to work alongside immigration and asylum officials to help improve child protection and care, or appointing independent oversight mechanisms (such as Ombudspersons) to provide information to children and families about their legal rights and facilitate complaints and redress.

Proceedings

30. Children face myriad challenges and transitions during and after migration, with their legal case as only one of many priorities. Making available post-arrival social services and legal representation to all unaccompanied children is imperative to upholding children's access to justice in immigration proceedings.
31. Unaccompanied children may experience **challenges attending judicial or administrative proceedings**, as locations may be at a significant distance from their homes and children, their guardians and legal aid providers may face lengthy and costly journeys to arrive at proceedings. Inconsistent or limited notice of proceedings can also mean that children are forced to miss school or work to attend.
32. Legal and administrative proceedings affecting migrant children **can take months or even years to complete, during which time some unaccompanied children age into adulthood**. This can cause them to be

¹⁵ See KIND, [Note on Unaccompanied Children Fleeing from Ukraine](#), March 23, 2022.

denied access to justice or redress, particularly in cases where they are not provided with a durable legal status in the country of residence and may be subject to removal upon reaching the age of 18.

33. Differences among judges and jurisdictions can lead to uncertainty and **disparate outcomes in the adjudication of cases**, including in some cases among family members.
34. Formal interview settings and immigration courtrooms are often **intimidating for children**, and children may have limited opportunity to gain familiarity with these settings and relevant procedures before proceedings with significant impacts for their rights, safety, and wellbeing.
35. In this respect, **an innovative practice has been the establishment of special children's dockets or other adapted proceedings** that center the best interest of the child. Training of all staff, including interpreters and adjudicators, on child-centered and trauma-informed practices; providing safe and child-friendly spaces; age appropriate information; and ensuring universal access to legal aid for children are critical aspects of such proceedings.

Outcome and impact

36. When available at the earliest moment, quality legal aid enhances the ability to assess vulnerabilities, identify the right procedural pathway, and ensures that the child's case is considered properly.¹⁶ According to UNHCR, the participation of legal aid providers from the onset of an asylum procedure can also make the procedure faster and fairer.¹⁷
37. There is a substantial, and growing, body of evidence that access to legal aid is critical to children's ability to access justice and effective remedies. For example:
 - a. In the **United States**, according to a 2021 Congressional Research Service report, immigration judges are 100 times more likely to grant legal relief to unaccompanied children with counsel than to those without.¹⁸
 - b. In **Australia**, Research by the Kaldor Centre Data Lab found asylum applicants with legal representation are, on average, five times more likely to succeed on a merits review than applicants who represent themselves and are six times more likely to succeed at the judicial review stage.¹⁹
 - c. In **Canada**, a study exploring 70,000 asylum decisions between 2005 and 2009 found that 57% of claimants were successful when represented by lawyers, whereas only 15.2% were successful when they were unrepresented.²⁰

¹⁶ Council of Bars and Law Societies in Europe (CBBE), [CCBE recommendations on a framework on legal aid in the field of migration and international protection](#), 25 November 2022.

¹⁷ UNHCR, [Effective processing of asylum applications: Practical considerations and practices](#), March 2022.

¹⁸ Romero, Laura. "[Unaccompanied minors are representing themselves in immigration court, alarming advocates](#)," ABC News, June 3, 2024.

¹⁹ Daniel Ghezlbash and Jane McAdam, "[Why the government's plan to overhaul the asylum system is a smart use of resources – and might just work](#)", The Conversation, 5 October 2023.

²⁰ Smith, Craig Damien; Rehaag, Sean; and Farrow, Trevor C. W., "[Access to Justice for Refugees: How Legal Aid and Quality of Counsel Impact Fairness and Efficiency in Canada's Asylum System](#)" (2021). Canadian Forum on Civil Justice. 4.

RECOMMENDATIONS

- **Adopt a broad and comprehensive definition of "access to justice"** that explicitly includes administrative and other non-judicial proceedings.
- **Clarify that children have a right to universal legal aid** in all procedures that affect them.
- **Clarify that legal aid must be effective**, including that is child-centered, accessible, independent and professional.
- States should **ensure children have an entitlement to legal aid in national law**, including that children are always exempted from the means test.
- States should **designate specific funding** to ensure the accessibility of legal aid, especially in remote or otherwise underrepresented areas.
- States should **provide specialized training and other resources** to legal aid providers on child-centered and trauma-informed practices.
- States should **establish special children's dockets or other adapted proceedings** guided by children's best interests.
- States should **involve children in the design and implementation of procedures and mechanisms for access to justice and effective remedy** and regularly seek children's feedback on how these can be improved.
- States should **introduce measures to facilitate continued access to justice and effective remedy during children's transition from adolescence to adulthood**, including by guaranteeing continued access to legal aid.²¹

²¹ Consistent with CRC, *General comment No. 20 (2016): The Implementation of the Rights of the Child During Adolescence*, CRC/C/GC/20, 6 December 2016.

Kids in Need of Defense (KIND) is the preeminent international nongovernmental organization devoted to the protection of unaccompanied and separated children. In 2008, KIND was founded by the Microsoft Corporation and Co-Founder and Patron Angelina Jolie to address the gap in legal services for unaccompanied children. Today, KIND has offices and staff across the United States, Mexico, Central America and Europe. Our team, and KIND’s extensive network of private sector pro bono and nongovernmental partners, provide unaccompanied children with child-centered, trauma-informed holistic care that includes legal representation and psychosocial support. We are a trusted source of accurate and timely information as well as innovative solutions that protect the rights and well-being of unaccompanied children on the move. We partner with governments, international organizations, civil society, and the private sector to implement child-friendly solutions as well as to deliver targeted advocacy, training, technical assistance, and capacity strengthening to promote stronger child protection around the world.

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