



SAHRAWI NGO ALLIANCE  
تحالف المنظمات غير الحكومية الصحراوية

**General Comment No. 27 on the rights of children to access  
justice and effective remedy  
Proposals of the Sahrawi NGO Alliance**



**August 2024**

## General Context

1. Although international law addresses the issue of children's access to justice and effective remedies, access to justice -defined as the individual's ability to obtain a fair and prompt remedy for violations of rights, and a prerequisite for the protection and promotion of other human rights- remains elusive for children.

This is due to the interplay of numerous factors related to contexts of peace and war, social representations, traditions, customs, and diverse legal systems, as well as the failure of some national legal systems to harmonize their legislation with the provisions of the Convention on the Rights of the Child (CRC), its Optional Protocols, and other fundamental human rights conventions.

2. This is based on the provisions of Article 2, paragraph 3, of the International Covenant on Civil and Political Rights (ICCPR), which mandates guaranteeing the right to an effective remedy for all persons, including children.

It is further supported by other instruments requiring the provision of protection against violations and ensuring effective and safe access to judicial services for children in particular, given the vulnerability of this group. Their access to justice enables the accountability of perpetrators, which constitutes a duty falling upon State Parties regarding the respect, protection, and fulfillment of human rights.

3. General Comment No. 31 of the Human Rights Committee recommended, in paragraph 16, that remedies should include "reparation, restitution, rehabilitation, and measures of satisfaction, such as public apologies, public memorials, guarantees of non-repetition, and changes in relevant laws and practices."
4. Given the varying reasons leading children, their families, and their representatives to resort to justice services, whether involving criminal justice proceedings due to conflict with the law, providing testimony, being victims of crimes, or in contexts of armed conflict; or due to the nature of legal, judicial, and administrative systems, such as cases of enforced disappearance, detention, adoption, displacement, statelessness, or migration, children may be exposed to significant risks. Consequently, their right to remedy and compensation may be lost due to the aforementioned challenges.
5. However, it is established that in cases of children in conflict with the law, there must be a reinforcement of the conviction that children must be treated in a manner consistent with the strong obligation to support the child, promote their sense of dignity, ensure their access to justice and effective remedies in all cases, and guarantee them a fair and speedy trial.
6. In this framework, the Sahrawi NGO Alliance submits this written contribution as part of the efforts of the Committee on the Rights of the Child experts, NGOs, universities, and other stakeholders to strengthen understanding regarding the guarantee of children's access to justice and the enhancement of their remedies.

The Alliance considers that children's access to justice is not merely a right, but the sole pathway to supporting and enforcing all other rights that should be guaranteed to every child, including civil, political, economic, social, and cultural rights.

### **Protection of the Legal Status of Children**

7. The NGO Alliance notes the existence of many children in a situation of statelessness, which strongly impacts their ability to enjoy all other rights, including the right to education, the right to health, and other related rights.
8. The Alliance has monitored thousands of children born in the Sahrawi refugee camps in the Tindouf region, southwestern Algeria, since the establishment of these camps in 1975. Neither they nor their families have been subjected to a UN census based on individual interviews to determine their original areas of residence, the reasons for their migration, forced displacement, or displacement and settlement in those camps on Algerian territory, and to determine the humanitarian needs of the Tindouf camp residents.
9. The Algerian authorities have not responded to Security Council resolutions calling for a census of the camp population to enumerate them and identify their needs regarding food, education, health, and other necessary concerns for the general supervision of refugee camps.
10. The failure to conduct a census of the Sahrawis in the Tindouf camps significantly affects the legal status of Sahrawi children, rendering them stateless due to the lack of a legal status resulting from inclusion in a comprehensive census of the camp population. Such a status would entitle children to enjoy the rights contained in the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.
11. The Alliance affirms that not allowing the UNHCR to conduct a census of Sahrawi children leaves no opportunity for these children to access justice or enjoy effective remedies before Algerian national courts. Nor does it allow for access to international litigation avenues or the submission of individual communications to the Committee on the Rights of the Child, despite their presence on Algerian territory.

The delegation by the Host State authorities of their powers to supervise the organization of the camps and to exercise security and judicial jurisdiction to the Polisario Front<sup>1</sup> has reduced the opportunities for protecting children's rights to access national or international justice.

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<sup>1</sup> The Sahrawi NGO Alliance submitted a recommendation to the Human Rights Committee regarding the need to revoke the mandate given by the Algerian authorities to a military organization overseeing the Tindouf camps. The Committee adopted our recommendation, emphasizing that Algeria must assume its responsibilities for the protection of all persons within its national territory, including Sahrawis residing in the Tindouf camps, among them children.

See the concluding observations of the Human Rights Committee during its examination of Algeria's fourth periodic report.  
[CCPR/C/DZA/CO/4](#)

Consequently, it has become impossible to approach the Committee regarding violations occurring in the camps against children, as the State Party consistently justifies its refusal to deal with this type of communication by claiming it falls outside its jurisdiction and devolves to the Polisario movement, in a flagrant violation of international law.

12. The NGO Alliance encourages the Committee on the Rights of the Child to shed light on the prevalence of statelessness in the Sahrawi refugee camps in the Tindouf region, southwestern Algeria, due to its devastating impact on the enjoyment of rights and freedoms, the protection of individuals and groups, and the denial of any right to access justice and fair remedies, particularly for children.

13. The Alliance draws the attention of the Committee experts to the fact that the recommendation to correct the legal status of Sahrawis in the Tindouf camps, and the implementation of the Treaty Bodies' concluding observations calling for the revocation of the Algerian authorities' delegation of jurisdiction to the Polisario organization, would enhance the opportunities for Sahrawi children to access justice.

It would guarantee them fair remedies, whether in Algerian national courts or at the international level. Providing access to justice for Sahrawi children would benefit Sahrawi refugees and their children, enhance human rights and the rule of law at the national level, and contribute to the development of best practices in strategic litigation to provide maximum protection for children's rights.

14. The NGO Alliance cites the provisions of Article 2, paragraph 3, of the ICCPR, which stipulates the right to an effective remedy, and Human Rights Committee General Comment No. 31 regarding the nature of the general legal obligation imposed on State Parties.

This relates to the State Parties' responsibility to ensure available and effective remedies for individuals to defend those rights, taking into account the special vulnerability of certain groups such as children. On this basis, achieving justice for Sahrawi children in the Tindouf camps aims primarily to correct the illegal situations of children and adults since the establishment of the camps, in addition to ensuring their access to justice system services in a manner that serves their best interests and is in accordance with international standards and rules.

### **Specific Cases, Particularly in Armed Conflict, Humanitarian Contexts, Post-Conflict Situations, and Emergencies: Barriers Preventing Children from Accessing Justice**

15. The Sahrawi NGO Alliance notes that despite the existence of a comprehensive legal framework guaranteeing children's rights, access to justice remains a significant challenge for children.

This is due to numerous reasons, including the complexity of justice systems, children's ignorance of their rights and the existence of judicial services relevant to their cases, and a lack of necessary information about where to go and the procedures to follow to obtain a fair remedy.

16. The Alliance raises the issue of children's fear, due to their young age, of the justice system in general, and the fear of repercussions from accessing judicial services, specifically harassment, stigma, abandonment, or reprisals against them and their families. Furthermore, there is uncertainty that their complaints will be taken seriously and considered fairly regardless of their young age, gender, or ethnic or cultural background.
17. In various contexts, children's fear of exposure to reprisals—including violence, intimidation, exclusion, and ostracism—is exacerbated, particularly in situations characterized by lawlessness and the absence of a central authority regulating the affairs of the population.

With reference to the situation of children in the Sahrawi refugee camps, the entity supervising justice services is not a national body represented by the Algerian State authorities; rather, it is administered by a military organization that prohibits the entire camp population from voicing the grave human rights violations to which they are subjected.

Consequently, the population has become habituated to the reality that violations are a systematic and normalized occurrence within the camps, rather than actionable offenses warranting the submission of information to courts for the purpose of seeking redress and claiming compensation.

## **Existing Barriers**

18. Children's desire to access justice is difficult to realize in the absence of law and a democratic authority that ensures the rule of law and the capacity to intervene in a timely manner to protect rights and freedoms when necessary. The matter is further complicated in the case of the Sahrawi refugee camps in southern Algeria, raising concerns regarding the guarantee of access to judicial services for persons in general, and children in particular.
19. The NGO Alliance deems it of utmost importance to provide information regarding the fact that boys and girls residing in the Tindouf camps are not immune to kidnapping. For instance, the children **Tetaha Mint Mohamed Abdallah Ould Chebih, Fatima Ali Bouhbin, Safia Mint El Hassan Ould Hmida, El Kouria Mahmoud, Fatima Mahmoud, and El Ghalia El Bachir** have all been subjected to kidnapping<sup>2</sup>, resulting in detention and severe physical and psychological harm.

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<sup>2</sup> The Alliance listened to their mother, Darja Mint Mohamed Fadel Bouchaab. She confirmed that they had managed to escape from the Tindouf camps and were living in Sahara provinces, where they enjoyed full Moroccan citizenship rights.

Access to justice remains impossible due to the Algerian authorities evading their international responsibilities related to the protection of persons present in the camps.

20. However, it is noted that the State of Algeria does not work to follow up on recommendations issued by Treaty Bodies. Even if it addresses some partially, it excludes the Tindouf region, knowing that it falls within its legal responsibility and that it is obliged to address all violations occurring within its territorial borders without exception.

This contravenes the recommendation made by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families during its review of Algeria's report, where it emphasized Algeria's obligation to ensure that migrants, including those in an irregular situation, enjoy the same rights as citizens in law and practice, such as the right to file complaints regarding violations of their guaranteed human rights and the right to access redress mechanisms<sup>3</sup>.

21. According to a set of testimonies received by the Alliance, many girls holding Spanish nationality or residency are prevented from returning to Spain upon visiting family in the camps, often becoming victims of detention by the family.

This has occurred even in cases involving ongoing treatment for chronic illnesses. Detention by families is justified by the alleged "moral corruption" of their daughters and their saturation with Western culture; they are detained with the complicity of elements of the Polisario organization.

It should be noted that the detained girls are often the same individuals who were placed in early childhood by Polisario officials at the disposal of Spanish families looking for children to adopt, unbeknownst to their biological families, within the framework of what is known as the "Vacations in Peace" program.

## **Forced Displacement of Children**

22. the first moments of the establishment of the Tindouf camps on Algerian territory in 1975, officials of the Polisario organization targeted categories of children by deporting them to countries such as Cuba, Libya, the former Soviet Union, South Africa, and Spain.

This stage marked the beginning of unprecedented family and identity dispersion in the region, preventing children from enjoying the warmth of their families and depriving them of normal and balanced psychological development.

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<sup>3</sup> The Committee urges ensuring that migrant workers and their families have the right to file complaints regarding violations of their fundamental rights and to access remedies within the justice system.  
[CMW/C/DZA/CO/1](#), para. 17.

23. Children in Cuba were subjected to a policy of intensive indoctrination in the ideology of violence and military training<sup>4</sup>, performing military service at an early age. These children were exposed to continuous sexual harassment<sup>5</sup> without the possibility of defending themselves due to their young age and the absence of any opportunities to access justice.
24. In addition to the deportation of children to Spain, which has continued to be presented in a humanitarian guise under the "Vacations in Peace" program, this process involves transferring children to Spanish families to spend summer vacations for two months, or for medical examinations and proximity to hospitals.
- This constitutes a tacit agreement between Polisario officials, supporting associations, and Spanish families to transform travel for vacation or hospitalization into deportation and permanent residence.
- This occurs without informing the families of these children of the content of the contract between Polisario officials and Spanish associations that work deeply in the field of adoption, taking the form of humanitarian solidarity associations.
25. This process results in many psychological complications and impacts on the children's development and health<sup>6</sup> due to their removal from their families and deportation without psychological preparation and without possessing information regarding the receiving environment and the duration they will spend away from their original families.
26. In this regard, the ILO Committee of Experts requested Algeria to ensure the investigation of all cases of child trafficking and sexual exploitation<sup>7</sup>. Numerous recommendations were also presented to the State of Algeria on the occasion of the review of its report before the Universal Periodic Review (UPR) mechanism in 2012<sup>8</sup>.

### **Coercion into Military Work (Child Recruitment)**

27. Since the establishment of the Tindouf camps in Algeria, officials of the Polisario organization have worked to deprive a category of children of completing their education and coerced them into military work and chanting war songs.

This contradicts the provisions of the Convention on the Rights of the Child, which recommends guaranteeing education for children and the balanced development of the child's personality.

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<sup>4</sup> Documentary "Open Ticket to Cuba" Prepares Sahrawi Children for Deportation to Cuba and Libya

<https://www.youtube.com/watch?v=LU3vuG8eU1I>

<sup>5</sup> A documentary about the children's journey to Cuba and their suffering over more than 15 years, featuring testimonies from victims and witnesses

<https://www.youtube.com/watch?v=Z4tD1tLuVOo>

The Coalition also has testimonies from other children, now young adults, who were victims of forced deportation to Cuba. The Coalition has interviewed them and has their addresses and phone numbers available should they wish to contact them.

<sup>6</sup> A video documenting the suffering of young children in foster families:

<https://www.youtube.com/watch?v=XeYIyu5w8wg&hd=1>

<sup>7</sup> (ILOLEX)092011DZAI82, paras-2,3and4

<sup>8</sup> 129/49, 129/56,129/96

According to testimonies from a group of mothers, children are deprived of their childhood and join arduous military work at an early age, with the consequent psychological complications.

28. Given the gravity of these violations, the families of children who are victims of military recruitment find extreme difficulties in accessing justice due to the impossibility of directing their complaints to Algerian national courts, owing to the full delegation of legal and judicial jurisdiction to the Polisario movement.

In the absence of international community interest in the necessity of settling the legal status of Sahrawis in the camps, the grievances of Sahrawi children regarding their forced recruitment or other violations will remain kept secret, in the absence of international and UN guarantees to protect these victims should they resort to justice services.

## **Recommendations**

29. The Sahrawi NGO Alliance recommends the necessity of implementing international and regional human rights standards as they provide a comprehensive framework for ensuring children's access to justice, as a fundamental prerequisite for the protection and promotion of all other human rights of children. On this basis, attention must be drawn to the necessity for States to revise their national legislation, policies, plans, and procedures to ensure better compliance with international standards, particularly the Convention on the Rights of the Child and its Optional Protocols.
30. The Alliance considers it essential that the national legislation of State Parties include legal guarantees to protect the best interests of the child, protect them from discrimination, ensure the child's right to possess a nationality or refugee status, freedom from violence, and free and safe participation in proceedings throughout the justice process, as well as the right to legal assistance and other relevant aid, and the right to the speedy consideration of cases involving children.
31. The Alliance notes the absence of independent, safe, and effective mechanisms to address children's grievances and report under the law in many cases, in accordance with international human rights standards, particularly the Convention on the Rights of the Child. It encourages the Committee experts to communicate with State Parties that do not possess independent mechanisms directed at these ends. In this regard, it recommends verifying the information included in the Alliance's contribution regarding children in the Sahrawi refugee camps to address their legal situations related to obtaining refugee status, enabling them to access justice and enjoy fair remedies for the grave violations they suffer.
32. The provision of media and education platforms in the field of children's rights would dispel the fear of resorting to justice services.

In this regard, it is advised to explain the methods and formalities for obtaining fair remedies, ensuring that information is proportionate to the ages of these children and how they receive and share it with their families and legal representatives, in addition to ensuring their informed consent for those procedures guaranteeing access to justice.

33. The Sahrawi NGO Alliance encourages the Committee and State Parties to guarantee the expansion of the intervention space for civil society organizations working in the field of child rights.

This is to highlight best practices related to enhancing understanding of the vitality and necessity of resorting to justice services when grave violations are committed against children, and to prioritize the conviction that seeking fair remedies for children's grievances protects and promotes all other rights, strengthens and enshrines the rule of law, and supports the independence and efficiency of the judiciary in the face of serious abuses affecting children.