

**UPR PRE-SESSION ON CHILDREN RIGHTS IN UKRAINE,
GENEVA, OCTOBER 2017**

This statement is delivered on behalf of Coalition “Child Rights in Ukraine” – an informal union of 19 organizations established in 2012 to monitor observation of the rights of a child in Ukraine. The coalition participated in previous universal periodic review (UPR)

I. General measures of implementation of children rights

A. Follow-up to the second review

Despite the recommendations from a number of countries, including Moldova, to ensure effective implementation of the National Plan of Action for children (2010-2016), the problem of poor design and implementation of the state policy for children rights remains urgent. The key challenges identified then were limited funding and inconsistencies in activities planned. No much progress was achieved since then. The annual action plans continued to be adopted with considerable delays, mainly in the mid-year or later. Some categories of children, like children with disabilities in 2013 for example, were ignored and no action was planned for them. In 2016 the problems with implementation were explained by decentralization reform started as an excuse.

B. New developments since the second review

Although the Government in the person of the Ministry of Social Policy started its preparation of the new Plan of Actions as early as in 2015, the process is not yet finalised. In April 2017 the Concept of State Social Program of the National Plan of Actions on the UN Convention of the Rights of the Child till 2021¹. The Action plan shall be finalised by October 5. However the public discussion was not yet started so we assume that the process will be delayed. . Since the process is not transparent enough, we have no clear understanding of the pros and cons of the existing draft. What we know from UNICEF who supported the drafting process, it shall be a framework document with no clear indicators. No budget will be allocated for the NPA unless the conflict still undergoes. The risk is high that the document again will not become a strategic paper on the State Policy.

C. Recommendations

We therefore urge the Government to change the practice of poor planning and implementation of the State Policy on Children Rights and repeat our recommendation as of 2012:

- **Guarantee the implementation of the UN Convention of the Right of the Child by ensuring adequate budget allocations towards the implementation of the NPA on an annual basis as it is provided by the Law of Ukraine and by meeting the goals of the NPA in its activities.**
- **Present to the country a clear vision of the state policy for the right of the child.**

¹<http://www.kmu.gov.ua/control/ru/cardnpd?docid=249890555>

II. Right to be protected from all forms of violence

A. Follow-up to the second review and new developments

Recommendations from the member states (Italy, Slovenia, etc.) in the second UPR referred mainly to the issue of sexual exploitation of children and the need to improve both national legal frameworks and implementation of the international obligations including those stated in the Lanzarote Convention.

Despite the Convention was ratified in 2012, it is not yet implemented into national legislation and thus does not work as it should be. There were two attempts to adopt legal changes in line with the Convention though both failed.

The only recommendation on more clear identification of the term of child pornography in the national legislation was fulfilled.

At the same time, we still witness that more than 40% of criminal cases of sexual assault were close due to no enough proof collected. Children victims of abuse and/or their legal representatives neglect to go to the police as criminal processes and court trials continue to be long and tiresome process with numerous repeated interrogations of a child victim. Preparation of the professional staff remained hectic. As a result, the investments allocated by international and donor organizations for strengthening the capacities of law enforcements, judges and other relevant specialists in this areas lead to almost no changes².

Despite all forms of violence are prohibited by the national law, the violence remained broadly spread. Most often, it occurs at schools and institutions where freedom of movement is limited. However, often such cases, especially bullying, remains hidden, unless serious harm was committed. They often punish schools when they report of the cases of violence, rather than support them in solving and organising preventative work.

The mechanisms of coordination and cooperation in addressing cases of child abuse and other forms of violence remained under implemented.

B. Recommendations

The Government should:

- **implement CoE Convention 201 and with this aim to adjust necessary changes in the national legislation.**
- **ensure should use a consistent approach to ensure children have access to justice, preventative measure, protection and support in cases of humiliating treatment, bullying and abuse.**
- **establish mechanisms to encourage schools to identify violence and solve such accidents.**

² Studying preconditions for introducing the new practice of interrogating/questioning a child victim of sexual abuse (2016), https://issuu.com/wcuwcu/docs/studying_preconditions_for_introduc_00bf364a8b8137

III. Children in conflict with the law

A. Follow-up to the second review

Regardless the recommendations by Slovenia and Austria to advance efforts for establishing a juvenile justice system and promote alternative measures to deprivation of liberty for juvenile offenders, the juvenile justice (JJ) has still not been set up as a system in Ukraine. Its principles, functions, and objectives were narrowed down significantly. The implementation of declared objectives is still lagging behind: no proper awareness-raising campaign to explain its tasks and functions. The authority responsible for JJ administering has still not been set up. In recent years the number of correctional facilities for children in conflict with the law has been reduced, but no alternative correction and rehabilitation facilities, including day care and probation ones, were organized.

B. New developments

In 2012 the new Criminal Procedure Code (CPC) of Ukraine was enacted, which humanizes criminal proceedings against children: limitation of pre-trial detention terms; introducing alternative penalties; introduction of the specialization for judges, prosecutors, and investigators. However, it contains a number of significant collisions and formalities. For example, there is no control over child detention process and no time limits for being detained. We know a case when an 8 year old girl was detained for 6 hours while her parents were not informed.

The Justice Sector Reform Strategy (JSRS) was adopted by the President of Ukraine on 20 May 2015 and covers the period 2015 – 2020. The core mission of JSRS, in particular, is to define priorities for ensuring the rule of law in the administration of juvenile justice, compliance with public expectations for an independent judiciary and fair trial for juveniles, on the basis of European values and standards for the protection of human/children's rights. According to the JSRS the judiciary towards minors is currently insufficiently independent from the other state powers (the executive and legislative power), the performance of the courts and the management of the courts low, there is no linkage between the available capacity in the courts (judges and staff) and the workload of the courts, there is an underdeveloped system of financial management for the juvenile justice, a lack of transparency of the judiciary and free access to justice for minors.

In 2015 the Law On Probation was adopted. However, there are no trained specialists or training programs, no probation and socio-educational work programs.

The leading authority in elaboration of the JJ system remain the Ministry of Justice of Ukraine that with the support of UNICEF has launched the Strategy for reforming the juvenile justice system this May and established the Interagency Coordinating Council on Juvenile Justice for its elaboration. Relevant working groups were established.

The new strategy on prevention of child crimes developed in 2017 is a considerable step forward to implementation of the National Strategy for Human Rights, recommendations of CRC and new edition of CRC. In case of consistent development in the future, it may improve the situation considerably.

At the same time, the criminal police for juveniles under the ministry of internal affairs as a result of reforms was substituted by the juvenile prevention divisions. Its work though has not proved to be effective due to the problems with methodologies and staff selection. There is no single unit coordinating all child-related work within the police.

C. Recommendations

The Government of Ukraine should:

- **take all necessary measures to enhance the independence, accountability and transparency, the capacity, performance and quality of the judiciary towards minors by means of streamlining juvenile justice governance and the system for appointment of juvenile judges and prosecutors; improving competence of the judiciary towards minors; increasing transparency and accountability of juvenile justice; increasing efficiency of juvenile justice and streamlining the competences of different jurisdictions and increasing transparency and publicity of juvenile justice.**
- **implement its obligations identified in the National Strategy for Human Rights till 2020, specifically, para 74. «Implement effective JJ system in line with best international standards» and para 75 «Implement effective measures to resocialise and rehabilitate juveniles convicted and those who were released from conviction» to ensure establishment and development of the JJ system in Ukraine.**

IV. Special protection measures. Refugee children and children asylum seekers

A. Follow-up to the second review

The issue of special protection of refugee children was not reflected in the recommendations to Ukraine as of 2012 despite it was identified as priority by the Children Rights Coalition then. At the same time, there was some development in implementation of our recommendation - the Order "On examination for determining the age of a child left without parental care and is in need of social protection" has been adopted. However, there are recorded facts of noncompliance with the procedures stipulated in the Order, in particular all children seeking asylum in Ukraine without exception were referred for age assessment, there were also recorded instances where psychological age assessment of children was held without respect for culturally sensitive specifics of the child and without accounting for information about his/her country of origin.

B. Developments

No proper conditions for integration of children asylum seekers, refugee children and children in need of complementary protection were ensured. For instance, no state policy for learning Ukrainian as foreign language was developed.

There is a problem of birth registration of children asylum seekers born in Ukraine since a Certificate proving an application for the protection in Ukraine is not considered an ID.

No proper documentation as provided by the law limits children asylum seekers access to education at secondary, vocational training and high school. Similar problem prevents small kids from attending a pre-school facilities.

The mechanism of establishment of a status of a child deprived of parental care for minors who have no refugee status or the status of a person in need of complementary protection: was developed though it did not prove its effectiveness: asylum seekers cannot obtain the status of children deprived of parental care in practice.

C. Recommendations

The Government of Ukraine should:

- **ensure proper integration of refugee children, unaccompanied children and children requiring for special protection measures.**
- **improve legislation to ensure the right of a child to citizenship regardless of his/her origin and legal status of their parents and simplify the procedure of birth registration for children asylum seekers.**
- **ensure effective access to the education and pre-school care for refugee children and children asylum seekers by simplifying the procedure for entrance. The Government should ensure access to social assistance for unaccompanied children, specifically the procedure for getting the status of a child deprived of parental care shall be improved.**