

Children on the move

Children first

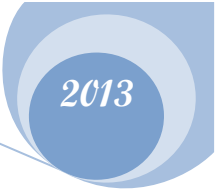
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The European Network of Ombudspersons for Children (ENOC)

The European Network of Ombudspersons for Children (ENOC) is a not-for-profit association of independent children’s rights institutions (ICRIs). Its mandate is to facilitate the promotion and protection of the rights of children, as formulated in the UN Convention on the Rights of the Child:

- To serve as a forum of colleagues for the exchange of information, capacity-building and professional support among the members.
- To promote and safeguard children’s rights and to work on strategies for the fullest possible implementation of the Convention on the Rights of the Child.
- To promote the establishment of independent children’s rights institutions (ICRIs) in countries worldwide and offer support to such initiatives.
- To stimulate contacts and support with and among other ICRIs worldwide and their networks.

ENOC was established in 1997 and as of 2008 has an independent Secretariat in Strasbourg, with office accommodation provided by the Council of Europe. Since 2008, ENOC has been financially supported by the Fundamental Rights and Citizenship programme of the European Commission.

ENOC has grown to include 42 member institutions in 34 countries, including in 23 of the 28 EU member states.

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I. WELCOMING ADDRESS

1.1 By Mr. Bernard De Vos, ENOC Chair Elect and General Delegate for Children’s Rights (Belgium/French Community)

The ENOC Chair Elect and General Delegate for Children’s Rights, Belgium (French Community), Mr. Bernard De Vos welcomed all participants to the ENOC Annual Conference in Brussels, adding that it was a great pleasure for him to launch the start of the three-day long conference dedicated to informing, sharing and debating.



Introducing ENOC as a dynamic and productive network and referring to ENOC members as the best promoters and

ardent champions of the International Convention on the Rights of the Children which remains the most signed and ratified international treaty, Mr. De Vos continued by honoring ICRIIs across Europe doing their best to ensure that children’s rights are protected.

Mr. Bernard De Vos highlighted the importance of the gathering for this conference; especially stressing the crucial role the participants play in a world where commercial and trade unity and political agreements come before any mutual consolidations. He emphasized the significance of solidarity, especially at times of financial disaster where social issues and poverty spread amongst families and children.

In addition, he introduced the core objectives of the conference, which focused on the theme of “children on the move”. Regardless of whether they travel alone or with their families, the difficulties they face whilst moving between continents or within member states have become a very sensitive issue for European societies. The main objectives of this year’s annual meeting were:

- To share national/regional experiences aiming not only to positively influence each other, but also to strengthen ENOC members’ mutual capacity.
- To reach a common agreement/position statement on the conference theme and show that despite ENOC members’ differences in terms of institutional models, scope of powers, agenda priorities etc. ENOC members are capable of speaking with one

voice when it comes to defending an issue that goes beyond national boundaries: children affected by being on the move.

As a final note, Mr. Bernard De Vos thanked his collaborators Stephan Durviaux, David Lallemand and Polina Atanasova, who worked so hard to organize the annual meeting.

Speeches, presentations from the plenary and workshop sessions are available on the ENOC website under “Annual meetings”: <http://crin.org/enoc/meetings/index.asp>

1.2 By Ms. Leda Koursoumba, ENOC Chair and Commissioner for Children’s Rights (Cyprus)



The Chair of the European Network of Ombudspersons for Children, Ms. Leda Koursoumba, started her speech with warm greetings, welcoming all participants to the 17th Annual Conference of ENOC and extending her congratulations to the host of the Annual Conference--the General Delegate for Children’s Rights (French Community), Mr. Bernard De Vos and his institution.

Ms. Leda Koursoumba began her highly informative speech with a brief introduction to the conference theme.

“Children on the move” refers to children with widely ranging status, such as children who migrate from their country of origin to and within the territory of the EU seeking survival, security, improved living standards, economic opportunities, education, protection from violence, abuse and exploitation, family reunification-very often a combination of the above mentioned reasons. They may encounter various situations of vulnerability such as trafficking, re-trafficking, and living on the streets as migrants with no documentation, lack of access to essential services and no access to any social or economic rights including health, social protection and education.

The highlight of Ms. Koursoumba’s speech was the difficulties these children experience and the unfortunate situations they unwillingly face; which is why this group of children need close attention and adequate intervention from responsible authorities in order to protect their rights and fulfill their needs under all circumstances.

On the other hand, there are legislative and fragile economic factors that impose threats to human rights, thus deteriorating the situation of children in general and especially of more vulnerable groups such as children on the move. Due to their vulnerability they are not able to raise their voice about concerns leading to violations of their rights.

Many ENOC members found it extremely concerning that conditions are deteriorating for children on the move. This is the culmination of a series of activities, presentations and initiatives that will be presented at this year’s Conference and the ENOC documentary reflecting these children’s daily difficulties aims to reach wider audience. The ultimate aim is to promote understanding that ‘children on the move’ are entitled to their full rights at every stage of their lives.

After introducing the speakers, she extended her thanks to all participants, wishing them a productive conference and inviting participants to discuss what they can do together to improve the situation of children on the move.

Ms. Leda Koursoumba also presented a summary¹ of the activities, projects and initiatives that have been conducted by ENOC during the Cypriot Presidency covering the period October 2012-September 2013.

¹ Summary presentation of the Cypriot Presidency and Annual report of Bureau’s activities available here : http://crin.org/docs/FileManager/enoc/Summary_of_the_Cypriot_Presidency_2012-2013_ENOC_2013_AC.pdf



II. KEYNOTE SPEECHES

2.1 “The Rights of All Children in the Context of International Migration” – Mr. Bernard Gastaud, member of the UN Committee on the Rights of the Child

Mr. Gastaud spoke to the conference about the complexity of the migration issue and the lack of direct applicability of provisions of the UN Convention on the Rights of the Child which formulate specific obligations for States, leading to deprivation of protection for migrant children. Hence, international law must be incorporated into national law to provide specific measures. Migrant children often are unaware of the law, afraid to follow procedures or experience language barriers that prevent them enjoying the rights they are entitled to.



Bernard Gastaud, member of the UN Committee on the Rights of the Child, pointed out three major causes that force migrant children to remain in irregular situations. Many children on the move have no entitlement due to lack of documentation. They are not able to enroll in schools, to access health care or housing. In addition, they continue to meet obstacles regardless of their migration status due to wrongly enforced legislation based on intolerance, corruption and racism. The second cause that subjects migrant children to life without protection is the current economic crisis and rising unemployment, which negatively impacts vulnerable families with no social protection. The lack of financial resources is the principal cause for unaccompanied migrant children moving away from their countries. Moving alone, they need to be supported but often the host State cannot provide them with any financial or social assistance. The third cause Mr. Bernard Gastaud mentioned is the involvement of incompetent, corrupt, hostile, negligent or non-trained professionals dealing with children.

A State Party to the UN Convention on the Rights of the Child has the primary responsibility to ensure the enjoyment of children’s rights by taking all appropriate measures for protection and implementation. One of the many responsibilities of the State Party aiming to fulfill its obligations under the CRC should be to review its legislation on immigration, leading to improvement in reception conditions for migrant children. The general and specific law should be enforced without any discrimination and an independent body should be established to monitor the full and correct implementation of children’s rights. The second

and third obligations require the allocation of the necessary budgetary resources to ensure the realization of the rights of migrant children and to obtain accurate, up-to-date knowledge of migrant children’s needs. While understanding that every child’s experiences are unique.

Last but not least, a State Party should develop plans and policies that will enable the mobilization of human, financial and technical resources for the protection and promotion of children’s rights in regard to the provisions of the Convention. A coordinating body should be established with sufficient resources, a clear mandate and the authority to ensure the implementation of the Convention at national as well as between regional and local levels.

In order to improve the procedures for child repatriation or family reunification, cooperation between the States may require bilateral or multilateral agreements. International Institutions such as the United Nations High Commissioner for Refugees, United Nations Educational, Scientific and Cultural Organization, World Health Organization and so on should be easily accessible for States that need assistance. Moreover, if a particular State experiences insufficiency of technical, financial and human resources or in case of natural disaster or crisis, it may seek assistance from another State Party to the Convention. Since international cooperation is one of the principles of UNCRC, assistance should be provided without any expectations of compensation and it should be considered as a State Obligation.

2.2 “The Right of the Child to Rest, Leisure, Play, Recreational Activities, Cultural Life and the Arts (art. 31) – Introducing General Comment n°17 of the UNCRC” – Ms. Theresa Casey, President of the International Play Association (IPA)

Ms. Theresa Casey, President of the International Play Association introduced the recently released General Comment n° 17 on article 31 of the UNCRC—“the right to play and leisure”.

She began her speech with specific examples given by both adults and children interviewed about the conditions that restrict children from playing. The fears of adults that restrict children’s play, hazardous environments, pressure for educational achievement, the impact of electronic media, lack of understanding from adults of how crucial play can be in a child’s life and commercialization can be considered as elements that influence the opportunity of a child to play.



The IPA assisted the UN Committee on the Rights of the Child in tasks where consultation and engagement was needed with adults and children from around the world in order to make them understand the importance of recreational activities and play. The IPA has set two main goals which are: for the Committee to draw attention to article 31 rights and the IPA to promote the terms of the General Comment n°17 in order to mobilize people around children’s rights to play and leisure to ensure it will reach the stage of action by State Parties.

Ms. Theresa Casey went on to introduce the General Comment, emphasizing its significance in promoting a clear understanding of the child’s specific right to play. However, ignorance of article 31 rights often results in lack of investment, inappropriate provision and weak or non-existent protective legislation for children at national and local level planning. She followed up by defining the three core objectives of the General Comment that demonstrates a realization of article 31 rights which are respectively:

- To enhance understanding of importance of article 31 rights for children’s well-being and development.
- To ensure respect for strengthen the application of the rights under article 31 as well as other rights in the Convention.
- To highlight the obligations of governments, the rules and responsibilities of the private sector, and guidelines for all individuals working with children.

She further focused on the paramount significance of the General Comment being issued in today’s dramatically changing world. Additionally, other relevant research has indicated that play contributes to many aspects of human life-- from social relationships, cooperation, health and rehabilitation, to learning and performing and overall well-being. Moreover, opportunities for play can be therapeutic or rehabilitative for children, who have experienced bereavement, trauma, loss, dislocation, exploitation, violence and abuse; who need the opportunity to engage and share experiences in order to recover a sense of normality and connectedness to help regain control over their lives.

The Committee has emphasized in the General Comment that all the constitute parts of article 31 rights have to be respected and fulfilled for its effective implementation. The Committee provided an extensive explanation of States obligations in this respect, but also in terms of helping the Committee to monitor and identify ways of implementing Article 31 which may require legislation and state services. To sum up, children should always be supported when they want to play and their rights should not be forgotten. Both space and time need to be ensured for them to interact with friends, to participate in games and to be part of cultural and artistic life--which is why General Comment should be made more widely known and applied.

Discussions

In the latter discussion, the issue of the use by children of media and the internet was raised. Conference participants questioned the audience as to whether the use of new technologies by young children can be considered as a way of play or an obstacle to play. Insisting on the fact that children are spending many hours with their electronic gadgets, thus being totally disconnected from the outer world, questions were raised as to the effects, beneficial or harmful, of the extensive use of internet on the physical and mental development of children. As a matter of fact, electronic media is considered as a way of play for children; however, it surely must be balanced as at the same time it may cause concerns in terms of the environment children find themselves in when online. It has been emphasized that the external environment has changed and institutions should be more careful in what they promote as there are issues at macro level, especially when it comes to the role of the business sector and resistance to designating public spaces for children. Ireland has mentioned that the question goes beyond children’s desire to play and principally concerns States’ obligation to ensure there are public spaces for play. England has also agreed with Ireland in terms of being more innovative as human rights institutions in trying to articulate what they want from the governments. On the other hand, Belgium along with England has passed anti-social behavior legislation that restricts to some extent children’s right to play and reported on the progressive privatization of playgrounds, swimming pools etc. In either case, the right to play is rarely reported in any State or NGO reports due to the lack of time and investment of the concerned parties into this matter and on the effects on children of Article 31 rights breaches.

2.3 “Presentation of the Preliminary Results of a Research Evaluating the impact of Ombudspersons For Children Across Europe” – Mr. Nigel Thomas, Professor of Childhood and Youth Research, University of Central Lancashire, and Ms. Sara Imanian, PhD student, University of Central Lancashire

Mr. Nigel Thomas, Professor of Childhood and Youth Research at the University of Central Lancashire, UK and Ms. Sara Imanian, a PhD student at the same university presented the preliminary results of an ongoing research study evaluating the impact of European Independent Human Rights Institutions for Children (IHRIC).

The researchers spoke about the progress of the research and initial findings based on interviews carried out in 2010 in Strasbourg with a number



of ENOC members and other European institutions. The aim of the interviews was to collect Ombudspersons for Children’s views about their role in general and about how they interact with different authorities at national level and also with each other.

The study covers three main areas of enquiry: the comparison of different Ombudspersons or Commissioners for Children’s models; assessment of effectiveness and impact; and the evidence-base for policy and practice. The primary focus of the research group is to identify how institutions operate and relate to different social, political and cultural contexts in the workplace.

Mr. Nigel Thomas presented the principal challenges of evaluating impact, emphasizing that the most difficult is assessing the consequences of particular actions undertaken by commissioners or ombudspersons. He also underlined the importance of IHRIC undergoing independent, external expert evaluations.

Following Mr. Thomas’ general observations on the study, Ms. Imanian spoke in more detail about the aims and outcomes of the research. The main goals of the research are to understand the depth of the impact and to develop methods and indicators for measuring impact. Additionally, the information about the impact of IHRIC across Europe has been compiled in two phases, with questions concerning the ranking of priorities and stakeholders’ influence on work also included. Noting that 28 out of the 42 ENOC members responded, the survey indicated that Ombudspersons for Children’s top three priorities were to influence law, policy and practice, followed by promoting the full implementation of the CRC. The third priority was promoting awareness of children’s rights among children and adults. Mr. Thomas presented the second phase, called ‘Appreciative Inquiry’ (AI), which focuses on the strengths and assets of institutions rather than on investigating them. Exchanging ideas with the core team of the institution, examining the gathered data through interviews and relevant documents, sharing the findings with the institutions that will help future work, are the three stages of appreciative inquiry. Mr. Nigel Thomas also spoke about how difficult it is to measure impact as there are different agendas to consider between institutions and stakeholders, but he highlighted the importance of finding a way to record in a systematic way, whenever possible, the impact of a policy. Nevertheless, he agreed about the suitability of AI for evaluating institutions, leaving space for further development and adaptation of the method.

To conclude, Mr. Thomas told Conference participants that he and his team are ready to offer services to individual Ombudspersons for Children’s offices or to ENOC providing advice or any other help in to improve impact assessment.

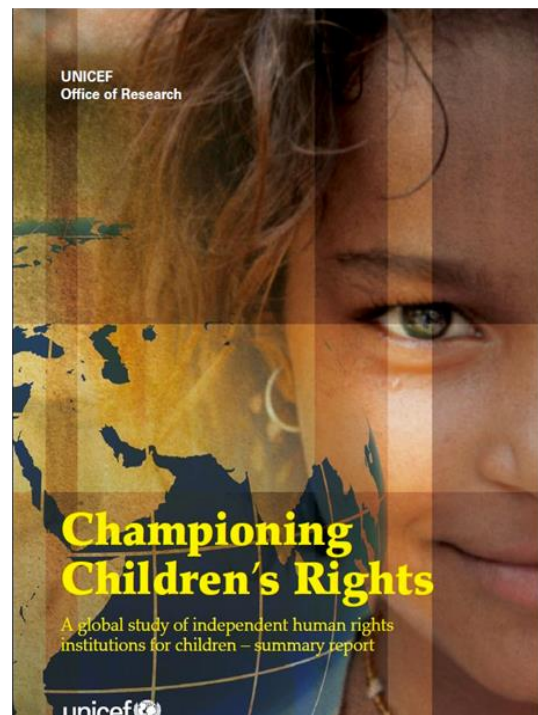
2.4 “Championing Children’s Rights: Introducing the Global Study of Independent Human Rights Institutions Conducted by UNICEF Innocenti Research Centre” – Ms. Vanessa Sedletzki, International Consultant, main author of the study

Ms. Vanessa Sedletzki thanked ENOC and individual members who helped in setting up the research and carrying out the survey by providing relevant data. In the research field, she examined the factors that make an institution fit for children in a political system made by and for adults.

In addition to promoting the expansion of independent human rights institutions for children (IHRIC), it is the first study that covers institutions around the world rather than being limited to specific regions, so highlights common global features. It also observed that there are common difficulties in different countries and regions around the world concerning the status of children and the practical work of independent institutions limited by their mandates, resource shortages and difficulties in implementing recommendations.

Different contexts can illustrate the differences in monitoring the situation of children in high income countries in relation to different situations, such as children in detention or out of homecare or when monitoring refugee camps or addressing child trafficking. Therefore, there is a major difference between fighting for resources with national parliaments in the national budget and fighting for resources in developing countries with international donors.

Several core achievements have been identified, many of which have much to do with making children visible in policy-making. The recommendations made by independent institutions can be linked directly to particular pieces of legislation, followed by reforms related to children and families. Child participation and specific situations are equally important, but there is a lot to learn about accessibility and effectiveness in solving children’s problems in an innovative and creative manner. She also questioned the operational ability of institutions and the way they interact with each other, stating that the mandate will be stronger if the institutional environment gives importance to the rights of children. However, institutions can be proactive and this may influence the environment and alter the mandate.



Resource 1: Vanessa Sedletzki, UNICEF

In conclusion, institutions have been recommended to increase awareness of their existence among children, to nurture and expand partnerships, to segment complaint data, to encourage cooperation between independent institutions nationally, and to set clear priorities and follow a strategic plan.

2.5 “Introduction to the Conference Theme” – Mr. Yves Pascouau, Senior Analyst on European Migration and Diversity at the European Policy Centre

The present intervention is devoted to the EU framework in the field of asylum and migration, with a special focus on the involvement of EU institutions and to what extent they manage to protect the rights of the child.

A Senior Policy Analyst at the European Policy Center, Mr. Yves Pascouau presented the work accomplished in the children’s rights field at EU level through three stages. He began with identifying rules dealing with children’s human rights in treaty provisions (primary law), continuing with a short overview of EU secondary legislation on asylum and migration, supported by explanations and case studies from the European Court of Justice. To conclude he talked about prospects and remaining gaps that need to be overcome.



Within the context of treaty provisions, respect for fundamental values, such as respect for human dignity, freedom, democracy, rule of law, human rights especially those of children are among the core primary EU principles. In addition and in relation to the situation of ‘children on the move’, it is stated that EU has an obligation to promote its values of respect for human rights and eradication of poverty in its external relations. Also, the obligations incurred upon EU Charter of Fundamental Rights weigh on the shoulders of not only public administrators, but also on private institutions.

The secondary legislation related to family reunification, the return directive, visa code and all asylum rules, are instruments in which the best interests of the child have been explicitly addressed. EU has also adopted particular rules in order to manage migration-related issues. Obligations deriving from both international Conventions and rules and primary treaty provisions have been taken into account by member states. For instance, all relevant factors

and the best interests of the child have to be carefully considered whilst examining an application for family reunification.

In conclusion, he underlined existing gaps in EU law provisions, for instance those related to situations of detention of migrant children or the existence of huge margins for manoeuvre by member states in cases of difficulty in the interpretation of EU provisions. Hence, there is an increased demand and need to involve the ECJ for an authentic interpretation of EU Law.

2.6 “The European Convention on Human Rights and the Rights of Children on the Move” – Ms. Françoise Tulkens, former judge and Vice-President of the European Court of Human Rights

Ms. Françoise Tulkens, former judge and Vice-President of the European Court of Human Rights (ECtHR), delivered a passionate speech on the implications of the European Court of Human Rights through case-law in safeguarding the rights of migrant children. She congratulated the Network for its collective work and for being a forum for exchange of ‘promising’ practices insisting on the need to create synergies. Introducing the background to the ECtHR case-law, she reminded the Conference that there is no specific provision for children or young people in the European Convention on Human Rights (ECHR). Article 1 of the Convention stipulates that the Convention applies to ‘everyone’ i.e. to all human



beings, children included. The biggest success of the ECHR is the existence of supervisory machinery -the European Court of Human Rights-which is a full judiciary body. However, there are some limitations linked to the prior exhaustion of domestic remedies (principle of subsidiarity), to the existence of actual and direct victims, but Ms. Tulkens recognized that the Court adopts a flexible approach on these notions. She also talked about the concept of ‘potential victims’ that she is supporting but reported that there is some reticence from the other ECtHR judges. Ms. Tulkens insisted on the need for the ECtHR to accept collective action and reported on a pending case against Romania. Last but not least it was once again pointed out that the ECHR is a living instrument subject to a dynamic interpretation by the Court following the evolution of European societies.

Ms. Tulkens presented a number of examples of ECtHR case-law addressing the situation of migrant children or young people, specifically:

- Article 3 ECHR on the prohibition of torture and inhuman and degrading treatment: *Mubilanzila Mayeka and Kaniki Mitunga v. Belgium* (12/10/2006); *Popov v. France* (19/01/2012);
- Article 4 ECHR on the prohibition of slavery and forced labour: *C.N. and V. v. France* (11/10/2012)
- Article 5 ECHR on the right to liberty and security: *Rahimi v. Greece* (5/04/2011), *Popov v. France*
- Article 8 ECHR on the right to respect to private and family life: *Jakupovic v. Austria* (6/02/2003), *Maslov v. Austria* (23/06/2008)
- Article 2 Protocol 1 on the right to education: *Timishev v. Russia* (13/12/2005)

In her concluding observations, Ms. Tulkens invited ENOC members to make use, individually or collectively, of the possibility to submit third party interventions before the Court in cases concerning the protection and promotion of the rights of children and in doing so to help judges decide on cases based on in source and reliable country information.

2.7 “Unaccompanied and Separated Children and Children in an Irregular Migration Situation” – Ms. Georgia Dimitropoulou, expert at the European Union Agency for Fundamental Rights

The main objective of the EU Fundamental Rights Agency is to provide EU institutions and member states with evidence-based information and advice on the state of respect of fundamental rights within the EU countries. In regard to that, the agency has conducted research on child trafficking in the EU and asylum seekers in EU with a particular focus on the respect of the fundamental rights of children in irregular migration situations. Regardless of whether they move across EU borders--accompanied or not, voluntarily or forced--the focus should be on the common element that bind these children, which is their status of being children rather than migrants.



The main findings of the latest research in terms of housing indicated that many member states apply punishment or imprisonment for renting shelter to irregular migrants; some other states require migrants to be registered with tax authorities and the population registry; whereas in other countries it is required that migrants notify the police of their presence in accommodation-- which they avoid doing, so risk ending up homeless or living in exploitative situations which endanger their health and lives. On the other hand, where accommodation is provided by state to separated children, they still face many problems--

such as limited capacity of reception centers, delays in re-placement, lack of quality standards and inadequate sanitary conditions, neglected cultural aspects in terms of food and religion, and lack of access to leisure activities. Similarly, access to healthcare is not good either. Despite the fact that only Germany provides healthcare beyond emergency care to children and family members, the situation remains problematic; whereas some member states treat parents and children differently. To make it worse, in some countries treatment is provided only to documented children while others they are only entitled to an emergency care which they need to pay for. Quality and continuity of care, detection practices, lack of awareness of both staff and migrants and unclear rules for provision of services are additional obstacles in relation to access health care. Similar to difficulties in accessing healthcare, there are further obstacles regarding access to education. Despite accessibility to education provided by the majority of the member states for irregular migrant children, some countries do not entitle children to free public schools due to required documentation for enrolment and reporting obligations. In addition, children are subject in many cases to detention, are not provided with adequate conditions, left with no legal advice, counseling or any relevant information during the waiting period and many experience physical or verbal abuse from adults during detention. In either case, detention should be used only as a measure of last resort if securing the removal cannot be achieved through less coercive measures. Thus, EU Member States are encouraged to set out national legislative rules dealing with alternatives to detention that require examination of each individual case before issuing reason-based detention.

Practical guidance has been issued by FRA in order to support fundamental rights compliant implementation of EU Law, encouraging all member states to consider providing accommodation as humanitarian assistance rather than facilitation of irregular entry; considering the ease of reporting duties, if not removed, allowing birth registration and providing access to basic social rights. Furthermore, unaccompanied children should be escorted by a well-trained and informed legal guardian, given necessary information and accommodation in accordance with the best interests of the child and given the opportunity to access education and healthcare.

2.8 “Guidance on Best Interests Determinations for Separated Migrant Children” – Ms. Andrea Vonkeman, Senior Policy Officer, Policy and Legal Support Unit, Bureau for Europe, UNHCR

Under the topic of how to determine the best interests of separated and irregular migrant, children, a senior policy officer from UNHCR Ms. Andrea Vonkeman, revealed some critical statistics about forcibly displaced people around the world. Numbers have been accelerating, with 2012 seeing the highest since 1994, reaching 45.2 million people worldwide of which 46% are children. The majority of refugees are from Afghanistan, Somalia, Iraq, Syria and Sudan.



Resource 2 : Andrea Vonkeman, UNHCR

Unfortunately there are serious gaps in regard to the protection and safety of children who are not registered but expect to be given the opportunity to move around. In fact, many of them have no access to asylum procedures due to overburdened systems which make it physically impossible to register and so access protection mechanisms. Additionally many children have been returned to the receiving border without a guardian and many end up on the streets due to disputes about their age. Another major gap is where immigration authorities look at the child’s immigration status instead of taking into account wider protection needs, which leads to failure to implement durable solutions in the best interests of the child. The fear of being sent back to their country of origin and family pressure not to reveal their whereabouts makes it harder for the guardians to build trust with the child.

Even though there is an Action Plan for unaccompanied children established by the European Commission, the issue of defining the best interests of the child and putting it into an operation remains.



Resource 3: Andrea Vonkeman, UNHCR

As a result, the UNHCR/UNICEF BID (Best interest determination) Guidance book includes a list of features for determining best interest through a four-stage process, identifying durable solutions and tackling gaps. BID aims to treat children not as irregular migrants but as children foremost, ensuring access to protection mechanisms and to respect of the best interests of children on the move who often remain outside of child protection systems.

Discussions

These highly enlightening presentations were followed by interactive debates open to the audience and participants. The comment that came from Ireland was in relation to a high domestic threshold for the definition of article 3 “degrading and inhuman treatment” and the ramifications of complaints being considered as one of the domestic impediments families face when going through the determination process. Ireland is seeking guidance on how to convince states’ authorities to lower the threshold for the definition of ‘degrading

and inhuman treatment’. Ms. Françoise Tulkens replied that using either a low or a high threshold in some cases can be considered paradoxical, but still its use can be as much subjective as objective, depending on various factors such as the age, the vulnerability or the situation of the child. On the other hand, article 3 will be diluted if there is not a high threshold, even in questions of appraisal where assessment is made on case by case basis with a reference to a balance test. Ms. Tulkens also mentioned that other non-standard issues can become Article 3 issues, like extreme poverty or child poverty. She reported on ECtHR case-law that concluded that a smack on the bottom of a child is humiliating and can meet the threshold of Article 3.

Looking from another perspective, the Ombudsperson for Children of Finland pointed out that she is strongly encouraging Finnish authorities to take serious care of unaccompanied asylum-seeking children in the same manner and with the same attention that is paid to Finnish children who need care. Representatives from Finland believe that in order to avoid some obstacles and issues that cause delays in procedures, asylum-seeking minors should be directed first to the child protection system rather than to migration services; and families that seek asylum should be considered according to the best interests of their children.

Yves Pascouau explained the possibility for Ombudspersons for Children based in EU countries to engage with the European Commission for cases of violations of EU law related to the protection and promotion of the rights of children or of migrant, asylum-seeking children. There are two ways of bringing evidence to the case: to fill in a web file and attach all the necessary documentation to the case; or to find the responsible person within the Commission dealing with the issues in hand and/or to contact directly the person who will present the case to the particular state’s government demanding explanations for the specified violations. Also, the importance of raising awareness in the European Commission of people working on the ground was emphasized during the debate, adding that if the state’s government does not deliver a satisfying explanation, the European Commission has the power to take the matter to the European Court of Justice in order to ensure the rights of children are fully respected by all means.



III. ENOC Documentary “Children on the move: children first!”



“Children on the move: children first!” is a documentary² realized with the assistance of ENOC members and Ombudspersons for Children’s Offices in Catalonia, Italy, Malta, Cyprus, Greece, Serbia, France and Belgium (French Community).

“Children on the move: children first” gives a say to migrant children who tell the reasons for having taken the decision to leave their home countries. The ‘violence’ of the trip, the appalling life conditions, the dangers the threats they had to face during their long journey and upon their arrival in Europe are overwhelming testimonies expressed all over the documentary. Their message is clear: notwithstanding their country of origin or their ‘migrant’ background, they all have the right to enjoy the same rights as any other children who were born in the countries where they are seeking asylum or refugee status; and they all have the right to look for a better future...

At the initiative of Belgium’s Ombudsperson for Children’s Rights (French community) and ENOC Chair elect, an introduction to the ENOC documentary followed by the screening of the teaser has been organized at the European Parliament in Brussels on the 1st day of the Conference, the 25th of September 2013. The meeting was kindly hosted by Ms. Véronique De Keyser, Ms. Anne Delvaux, Ms. Isabelle Durant, Mr. Louis Michel-members of the European Parliament. The teaser was followed by a debate where Ombudspersons for Children and European Parliamentarians exchanged views on the situation of minor migrants in Europe and agreed on urgent actions to be undertaken at their respective operational levels. Members of the EP also draw the attention of ENOC members on the urgent need of humanitarian assistance to be provided by European countries to millions of Syrian children living in refugee camps. As a result, ENOC members adopted a concise statement³ urging European Governments and all competent authorities to take quick and decisive humanitarian action to prevent the pending humanitarian catastrophe and to accept as many refugee Syrian children as possible.

² ENOC documentary «*Children on the move : children first!*» and the teaser are available at : <http://crin.org/enoc/resources/infoDetail.asp?ID=31870&flag=news>

³ ENOC Statement on Syrian refugee children available here : <http://crin.org/enoc/papers/index.asp>

The full '42 minute version of the ENOC documentary was screened at the ENOC Conference on the 2nd day of Conference, the 26th September 2013 and DVD copies of the documentary were made available to all Conference participants. After the Conference, further DVD copies of the documentary were distributed to relevant Governmental and Non-Governmental organizations.



IV. WORKSHOPS ON “CHILDREN ON THE MOVE”

4.1 Workshop on Unaccompanied/Separated Children

Unaccompanied migrant children in Croatia: issues and challenges – by Ms. Gordana Filipovic, Legal Advisor, Ombudsman for Children’s Office of Croatia

Despite a complete legal framework, the implementation in practice of relevant laws in the migration and UAM field is not always successful, regardless of ongoing cooperation with relevant international organizations. It has been confirmed by a study initiated by the UN Refugee Agency that there is a major gap between law and practice revealing many problems such as lack of funds, incomplete statistical data or data that differs from one institution to another, lack of guidelines for interviews with children on the move, lack of trained professionals, refusal of help for children and running away from centers, lack or insufficiency of specialized placement--overall a lack of an efficient approach towards unaccompanied children. The ombudsperson for children’s office has made recommendations to the government related to the training of specialized guardians, adopting procedural guidelines, and an approved protocol for unaccompanied minors setting out the guardian’s responsibilities and informing the child of his or her rights.

Recommendations on UAM by the Defender of Rights- by Ms. Emmanuelle Wachenheim, Head of Children’s Rights Service, Office of the Rights Defender, France

The Defender of Rights has formulated fifteen recommendations on unaccompanied minors addressed to public authorities in France around issues of their initial reception, access to programs for child protection, specific issues related to taking them into care and the modalities of supporting them when they reach the age of majority. The Defender of Rights strongly insisted on the fact that like any other child on French territory, ‘children on the move’ should be seen as children first, not as foreign minors, pointing out that their best interests and not their immigration status should be the primary consideration. This vulnerable segment of the population should receive protection in all spheres named in both national and international provisions.

Treatment of UAM in Greece: trends and challenges - by Mr. George Moschos, Deputy Ombudsman for Children’s Rights, Independent Authority of the Greek Ombudsman, Greece

Based on a high number of received complaints and on its own initiative, the Ombudsman for Children’s Rights initiated an investigation into conditions and treatment of UAM in detention centers, reception centers, shelters, care institutions, and on their access to education and health services. The Ombudsman for Children’s rights visited all the above mentioned facilities in collaboration with UNHCR, NGOs and other public services in order to identify possible children’s rights violations and shortcomings of systems, but also good practice and attempts to improve service levels. As a result of the investigation, the

Children’s Rights Ombudsman issued special reports making specific proposals addressed to responsible governmental bodies and as a result, many improvements have been made for unaccompanied children. However, challenges concerning family reunification, time of detention, age assessment procedures, legal aid and guardianship still remain and further efforts need to be made in these areas.



Resource 4 : Greece

Onsite investigations of the Hungarian Ombudsman on UAM - by Ms. Agnes Lux, Children’s Rights Project Manager, Office of the Commissioner for Fundamental Rights, Hungary

The Hungarian Ombudsman has undertaken several projects in the past touching on issues of violence, children in care, right to health, to raise awareness and the right to a healthy environment. Since 2009, the ombudsman has been carrying out onsite inquiries once or twice a year on unaccompanied minors-- children with foreign nationality and children separated from families can be classified in three categories: victims of human smuggling, asylum-seekers and children with immigration status (including stateless people). The findings of these inquiries revealed that many, if not all; legal provisions concerning the protection system for children see UAM first as foreigners. Hence, authorities are focused more on the prevention and management of the illegal migration than taking into consideration children’s best interests. Therefore, the lack of consideration for their ethnic and cultural background, language barriers or traumas they may have experienced make legal provisions which overlook their needs.

Age assessment process - by Ms. Anna Piferrer Aguilar, Advisor, Sindic de Greuges de Catalunya, Spain/Catalonia

Ms. Piferrer presented the position of the Catalan Deputy Ombudsman for Children’s Rights with regard to age assessment tests (tooth wrist X-ray, etc.) carried out in Catalonia on unaccompanied migrant minors in cases of age dispute. Age assessment tests are conducted when immigrant minors are undocumented or they hold valid documentation but come from countries with no reliable citizen register or who look as if they have reached legal age. In terms of the reliability and credibility of the tests the accuracies of the tests are not proved; there is no application of possible margin of error in assessing the age; and there is indiscriminate application of the tests (in cases of doubt or no doubt). The Catalan Ombudsman addressed a number of recommendations to competent authorities based on respect of international children’s rights standards. The tests should be practiced only if there is reasonable doubt; as a last resort; by fully trained professional staff; and young people subject to age assessment tests should be informed and heard during the proceedings.

4.2 Workshop on Intra-European migration and migrant families

The safeguard of Roma children’s rights in dismantling of camps - by Ms. Marie Derain, Deputy Ombudsperson for the Rights of the Child, Office of the Rights Defender, France

Ms. Derain reported on a high number of requests received by her office from different associations related to the situation and evacuation of Roma persons essentially of Romanian or Bulgarian origin, occupying land without title or right and having set up illegal camps or squats. There have been also complaints--principally from neighboring permanent residents. The Defender of Rights has also been questioned on the specific situation of children and the difficulties they are subject to in accessing education, health or other services. The Defender of Rights issued a report aiming to support competent authorities in implementing a public policy that does not jeopardize the fundamental rights of Roma people during the dismantling of the camps. Given the vulnerable situation of people in these camps, public authorities must respect their right not to be deprived of shelter, with special attention to be paid to the situation and best interests of children living in the camps. All evacuation procedures should be carried out in accordance with national and international requirements in terms of respecting human dignity.

Discrimination between children in relation to family reunification - by Ms. Sara D’Hondt, Chair of the National Commission for the Rights of the Child, Belgium

Ms. D’Hondt presented the shortcomings of the Belgian family reunification law and the negative impact on children and parents attempting to reunify their family. The unequal treatment on the ground of mobility, nationality, residence status, family ties and housing of the entitled person has been presented in the context of discrimination against children by Belgian family reunification law. The recent tightening on family reunification to citizens who circulate in Europe (applying EU law on free movement) has been imposed to control migration and to prevent integration problems. It has been accepted as an act of discrimination, by allowing family reunion in Belgium of a Belgian child with third country parents but restricting a Belgian citizen, requiring one to depart from the country to exercise the right to family life. In conclusion, Belgian citizens in the context of family reunification are treated more or less like third country nationals, sometimes even worse, and as all other entitled persons are subject to the same material conditions. Ms. D’Hondt concluded by pointing out that Belgian and many other European migration laws need scrutiny in light of the Article 3-best interests of the child-principle enshrined in the Convention on the Rights of the Child.

Mario Project – Protect Children on the Move - by Mr. Pierre Casenave, Regional Child Rights Officer, Terre des Hommes Foundation

Due to freedom of movement, citizenship considerations, asylum and immigration legislation, protection processes may be unclear and often national child protection system fail to meet children’s needs. The non-existence of best interests’ determination processes

leads to initial considerations of return by decision-makers. A new project called ‘Mario’ examines the ability and degree of protection of ‘children on the move’ by protection mechanisms. As a result of analyzing transnational migration paths and through consulting with children on the move directly during their journey, the information gathered exposes instances of major lack of collaboration between countries of origin and countries of last destination. No information in terms of socio-economic, family status of the child is shared between the countries, resulting in mistrust and information exchange difficulties. The recommendations made in accordance with the issues identified by the Mario network were presented to ENOC, believing that ENOC member institutions will maintain their role of strengthening child protection mechanisms and sustain further advanced protection of both EU and third country children on the move.



V. WORKSHOPS—UPDATES ON THEMATIC ACTIVITIES OF ENOC MEMBERS

5.1 1st Session: Health & Well-being; Family; Children in Situations of Vulnerability

In the workshop related to health and well-being, **Finland** presented findings and recommendations that came from a recent project on interaction and well-being in the lives of deaf and hard-of-hearing children. The main recommendations consist of encouraging cooperation in interests of deaf and hard-of-hearing children and families through defusing the tensions within the hearing and sign language field and recommending flexible methods of communication, peer support, and diverse initial information at child birth. This was followed by **Serbia**, proposing legal chances to improve the position of children with disabilities, including severely ill children, their parents

and families. The proposal formulated by the Ombudsman was that if parents have to become service providers when the State does not offer developed services for children with disabilities, it should be the State’s responsibility to provide adequate financial support to those parents securing their children’s existence. **Northern Ireland’s** presentation focused on suicide and multiple adversities whereas **Lithuania** has carried out an investigation on children living in school dormitories to assure their rights are protected and their interests are taken into consideration. As a result of discovering that there are a number of violations of children’s rights and failures to comply with safety requirements, the Ombudsperson for Children of Lithuania made a few vital recommendations to the Ministry of Education and Science, all municipalities and to all academic institutions. **England** further acknowledged predicaments where children are being excluded from school and has taken a deeper look at illegal exclusions and inequalities within the education system.

In a workshop based on family and family-related issues, **Cyprus** presented the Commissioner for Children’s rights position paper on the role of competent authorities in cases where parents are divorced or separated and miscommunication arises between the child and the parent due to dysfunctional relationship. **Ireland** covered the topic of local housing and health authorities and family reunifications. Niall Muldoon from the Irish Ombudsman’s Office presented a case where a child was unable to reside with the mother



Resource 5 : Finland

as a result of lack of liaison between housing and health authorities in information-sharing and consideration. **Catalonia/Spain** examined the transition from foster care to the country of the child’s parents, developing a three-stage process where the child’s best interests will be taken into account prior to transfer. In regard to inspecting substitute homes and analyzing institutional care for children, the Ombudsman for Children, Chancellor of Justice of **Estonia**, visited institutions and interviewed many children in order to amend the Child Protection Act with the aim of forbidding corporal punishment against children. Further disapproval of advertisements containing scenes of sex and violence before the screening of a particular movie for children in cinemas has been brought by parents to the attention of the Defender of Rights in **France**. The Defender of Rights has noted several issues of dysfunction between cinema-related institutions and committees, so decided to address recommendations to the French Ministry of Culture and Communication aiming to remind cinema operators to adapt trailers and adverts to the feature film that will be projected. Due to increasing systematic difficulties within the area of child welfare and child protection and an increase in child protection cases, **Ireland** addressed a special report to Parliament retrieving data from ten substantial investigations based on the complaints directly brought to Ombudsman of Children’s Office in Ireland.

In a workshop related to **the situation of vulnerable children**, **Wales** presented two different examples of recent and ongoing activities: one related to the child poverty strategy they have adopted since 2012 and the ongoing process, and a review of independent advocacy services for children in need and care leavers. The Ombudsperson for Children in the **Republic of Croatia** talked about the difficulties



Resource 6 : Republic of Croatia

faced by children living in isolated or remote areas in accessing adequate education, health care, affordable transportation and police presence in terms of protection. Certain cases in Croatia were given as examples, such as children living on isolated islands with no easy access to any of the aforementioned facilities. The Ombudsperson for children addressed a set of recommendations to competent institutions to make sure equal opportunities are provided to all children within the territory of the country. Another issue of great importance was presented by **Ukraine**, referring to Roma children. The last presentation concerned conditions for children and young adults in police cells and detention centers in **Sweden**, directing a criticism to Sweden for leaving young people unaware and uninformed about their rights while locked up.

5.2 2nd Session: Promotion of Children’s Rights; Violence; Child Participation

In the second session of parallel workshops, *promotion of children’s rights, violence cases and child participation* were examined. First, in **promoting children’s rights**, **Bosnia & Herzegovina** pointed out the importance of strengthening bonds between Ombuds-institutions and civil society in terms of solid cooperation, followed by another display illustrating raising awareness of the Convention on the Rights of the Child in their country.



Resource 7 : Iceland

which are political, legal, pedagogical and ethical practices.

Italy has further emphasized the effectiveness of promoting children’s rights through cultural alliances with the national TV, NGO’s, police departments, universities and Geronimo Stilton’s publications, which help the Ombudsperson reach the wider public and create a cultural environment that supports children’s rights. **Malta** has contributed to work including minors in advertising and electoral campaigns and looking at leisure trends among young people. The Commissioner for Children in Malta has conducted a study gathering data from interviews and focus groups with children, political party representatives and stakeholders assessing to what extent young adults should be involved in advertisements or be exposed to politics. Additionally, a follow-up study by **Malta** was around the topic of identifying different types of leisure activities for young people, barriers to leisure and the amount of time they have for leisure in Malta.

The Ombudsman for Children in **Iceland** reported on the long-awaited incorporation of the Convention on the Rights of the Child to their national law, advancing the rights of children within the country through implementing the four vital dimensions of the Convention,



Resource 8 : Italy

In relation to **the issue of violence against and among children**, the **Republic of Srpska/Bosnia Herzegovina** has issued a special report focusing on sexual exploitation of children, presenting recommendations on establishing programs for informing and educating children about sexual abuse. In respect of another violation subject, **Estonia** demonstrated the measures they have taken towards prohibition of corporal punishment of

the child. **Poland** has also launched a campaign through all main media channels on reducing social permission for acts of violence against children, but also insisting on the equal importance of educating children without using violence and showing ways of reacting to violent actions against children. Similarly, the Deputy Ombudsman for Children’s Rights Office in **Serbia**, in collaboration with UNICEF, launched a campaign on positive parenting and banning corporal punishment in order to raise awareness of the harm caused by corporal punishment and to promote alternative methods of disciplining children; a policy to be applied in all kinds of settings. **England** has undertaken an investigation into child sexual exploitation in groups and gangs, with special focus on children in care. In **Denmark**, there is a council established for children that advises the government and parliament and recommends amendments to legislation and administrative practices when children fail to receive justice in practice, even though they have rights. The council recommends the incorporation of CRC in Danish law and an introduction of legal measures by the government to establish an independent children’s ombudsman.

In the context of *child participation*, a group of young people and children on the move currently living in **Belgium/Flanders**, have been given the opportunity to raise their voices together in a ‘Kids Parliament’ to ensure equal rights, rights to education and overall rights in all procedures and aspects of their development. In comparison, the Ombudsman for Children in **Finland** presented a child consultation project collecting the views and opinions of children and young people and making sure they are taken into consideration within the agenda of municipalities which have a bigger impact on the implementation of the rights of the child in Finland than the State. Young people from different local governments and municipalities merged to provide advice and expertise to local decision-makers when making relevant reforms. They also prepared a leaflet on “Municipality reform is for Young People”, distributed to all municipalities in view of the planned merge of municipalities in Finland. Moreover, a program called Young Ambassadors of Rights for Children (JADE) has been organized by the Defender of Rights working with young people from the age of 18-25 who are in charge of educating (peer education) children about their rights and to promote the mission of the institution in **France** through public events and visits to schools, specialized facilities and recreational centers. The last presentation was from the Greek Children’s Ombudsman concerning an EU-funded project on ‘*child participation as an answer to violence, silence and insecurity*’. The aim of the project is to assess legislation, policy and practice on child participation. For the purposes of the research, the Ombudsman invited young people from different geographical areas, with different family, school, and other backgrounds to participate in the new Youth Advisory Community. Many young people in **Greece** express themselves through



Resource 9: Greece

violence, silence or insecurity, which is why the main goal of the research is to hear the experiences and to study the attitudes and proposals of young people in terms of practicing and promoting rights to participation. It has been pointed out that some institutions established to promote the expression of opinion, democracy or child participation do not necessarily fulfill their missions but rather cause frustration by failing to establish cooperation and communication. Finally, **Belgium (French Community)** presented a recent project involving young people mostly of foreign origin, Muslims, living in unprivileged areas who have been given the opportunity to express their views via different channels on the Syrian conflict and its repercussions on Belgium, particularly on the departure to Syria of young Belgian citizens (from foreign origin) to fight along with rebels, on their and their families’ integration into Belgian society and other topical issues of concern to them. The views and experience of participating young people have been widely covered by the media and channeled to a wider audience. The project run successfully and therefore there are already plans to adopt a similar approach focusing on the issue of poverty.



VI. COOPERATION WITH OTHER ORGANISATIONS AND NETWORKS

6.1 CRIN

The first speaker, Veronica Yates from **CRIN (Child Rights International Network)**, gave a brief introduction about the organization for those unaware of the role of CRIN, explaining that CRIN is a global network for information-sharing between organizations, NGO’s, ombudspersons, academic institutions and UN agencies working collectively to monitor children’s rights, report on violations and create possible solutions. CRIN’s main tool is the CRIN website through which recent developments and news coming from ENOC is made accessible. CRIN also monitors everything that goes on around the world in respect of children’s rights. It is available to all networks working in the children’s rights field, with ongoing improvements on the website which will soon be accessible in five different languages. (French, English, Spanish, Russian and Arabic – next to be Chinese)

In order for people to understand how to use other mechanisms in the UN system apart from the one provided for the Committee on the Rights of Children, CRIN develops toolkits and guidelines covering areas such as advocacy, ways of seeking legal assistance to support or represent a child and how to undertake strategic litigation on behalf of children’s rights. In addition, the CRIN website provides a database of over 30,000 resources which are available for free download. The idea is not only to download information, but also to encourage people to upload their own resources to the database and create an extensive online library. In recent years CRIN has started to collect and analyze case law where the Convention on the Rights of the Child was used in courts for decisions, compiling documentation to create a legal database as part of the general database.

Similarly, a WIKI of children’s rights has been created with mentions, recommendations and concluding observations from every human rights body such as the UN, Regional Human Rights Systems, Council of Europe, African Union, courts and so on, which are categorized by country and open to comment. The idea of this contribution is to identify a set of persistent violations which should be later linked to appropriate avenues to redress solutions and campaigns with responses from organizations in terms of the work done so far and to what extent it has been effective, giving the opportunity to collect more examples of effective advocacy.

Recent developments that have been monitored and are considered as new threats or emerging issues have derived from new trend of passing of anti-gay law which pretends to protect children by banning all mention of homosexuality. This began in Russia and has been followed by Ukraine, Moldova, Lithuania, Kazakhstan and Uzbekistan.

Moreover, a new campaign to be launched by CRIN soon aims to tackle sexual exploitation of children in religious institutions. CRIN plans to publish a global report on the sexual abuse of children by the catholic church which is due January, when the Holy See will visit the Committee on the Rights of the Child and be given recommendations and indications on how to stop sexual abuse of children in religious institutions. Ombudspersons of children’s rights and other relevant institutions and members will be contacted in regard to this matter-- in particular if they know any victim groups so that CRIN can create a network of victim and support groups. The last but not least project that CRIN has been working on in cooperation with a major law firm is a research about the legal status of children in each country and the status of the Convention in correlation with children’s situation based on 200 country reports. The research takes into account the availability of mechanisms for children to go to court without parents or guardians or seek legal assistance.

6.2 CHILD RIGHTS CONNECT & EUROCHILD

The next representative from Eurochild, Ms. Jana Hainsworth, presented the activities for both **Child Rights Connect** and **Eurochild**. She began by explaining the unique platform of Child Rights Connect, a non-profit network of 80 national, regional and international organizations coordinating NGO cooperation and action with particular expertise in the reporting process to the UN Committee on the Rights of the Child. She went on to give credit to the ombudsmen who have been increasingly active in the past few years in the alternative reports, some of whom have been -coordinating the NGO alternative reports. In retrospective to the conversations with NGO group representatives; there has been interest in having a joint meeting with or training from Child Rights Connect on the reporting process to the UN Committee on the Rights of the Child. The proposal from Child Rights Connect is that there is a specific session on the reporting process to the CRC at the next ENOC General Assembly meeting in 2014.

In addition, Ms. Jana Hainsworth identified the main focus of Eurochild, which is to promote the rights and well-being of children in Europe, continuing the work done with the European Commission, European Parliament and the Council of Europe that has led to the adoption of the EC recommendation on investing in children. Eurochild has shifted its advocacy focus to support its members at national level since the adoption of the new strategic plan. Three key areas of focus for advocacy support have been highlighted, respectively: mainstreaming on children’s rights, launch of a manifesto for the European Parliament Elections as well as supporting members to campaign with candidates and place children’s rights at the heart of the future Parliament and lastly, de-institutionalization, which has been a priority for Europe to shift children away from institutional care and into community and family-based care. She further introduced the campaign they have launched together with Hope and Homes for Children working in ten countries in Central and Eastern Europe. Due to the strong

relationship between ombudspersons for children and Eurochild members and privileged relationships with national partner networks, Eurochild wants to explore whether ENOC members are willing to participate individually or collectively in Eurochild with a potential to form a strategic collaboration. To conclude her informative speech, she spoke about their upcoming conference in Milan analyzing the contribution of child participation supported with involvement of children, workshops, study visits and panel debate and asked if they could show the trailer of ‘Children on the Move’ to be presented by Bernard De Vos at the Eurochild Annual Conference.

6.3 DEFENSE FOR CHILDREN INTERNATIONAL (DCI)



The last speaker, Mr. Benoit Van Keirbilck, from **DCI (Defense for Children International)**, started his contribution by introducing DCI as a founder member of Child Rights Connect, with a wide presence in 47 sections around the world for more than 30 year. However, the presence of DCI in Europe is relatively weak compared to the rest of the world, with

only eight sections, but a strong relationship with ombudspersons of the countries where it has departments (Netherlands, Switzerland, France, Italy, Spain, Slovakia, Belgium, Czech Republic). Besides being a member and hosting the secretariat of IPJJ (Inter-agency panel on juvenile justice) set up by a UN resolution, DCI follows the study on violence against children together with CRIN. Since the primary priority for DCI is juvenile justice, the new initiative of the organization is to support a global research study on juvenile justice-- given the lack of data and precise and reliable information in this field despite a number of reports and documents published in the past. The strategy for a start-up is to seek support and gather a coalition of stakeholders who will be interested in participating in this cause. In order to have comparable data in hand, IPJJ could carry on the study and collect information from countries around the world rather than asking an independent expert for execution of the study. Mr. Van Keirbilck concluded by asking the audience and ombudspersons for suggestions, ideas and feedback about the project or the principles of the study as well as leaving an open door for those willing to contribute further.





Resources 10 : ENOC Members

VII. ANNEXES

ANNEXE I

ENOC Position statement

“Children on the move: children first!”

adopted at the 17th ENOC Annual Assembly, 27 September 2013, Brussels

We, European Independent Children’s Rights Institutions (ICRIs), members of ENOC, express our deep concern regarding the position of “children on the move” in our respective countries and the notable deficiencies in European, national and local policies in responding to their needs and interests.

"Children on the move" covers all children who migrate from their country of origin to and within the territory of a European country in search of survival, security, improved standards of living, education, economic opportunities, protection from exploitation and abuse, family reunification, or a combination of these factors. They may travel with their family, or independently, or with non-family members. They may be seeking asylum, victims of trafficking, or undocumented migrants. The status of children on the move may differ at various stages on their journey and they may encounter many differing situations of vulnerability⁴.

We strongly stress the need for full compliance of existing laws, policies and practices across Europe with the United Nations Convention on the Rights of the Child (UNCRC) and its optional protocols, as well as with other relevant international instruments and standards, particularly in regard to “children on the move”.

We recall the 2006 ENOC Statement on State Obligations for the Treatment of Unaccompanied Children, the UNCRC’S General Comment n°6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, as well as the report of the 2012 Day of General Discussion of the Committee on the Rights of the Child on “the rights of all children in the context of international migration”.

Recognising the significant challenges presented by the current economic crisis, ENOC recalls that pressures on public budgets should not prevent member states from complying with their international legal obligations in relation to children, especially “children on the move” who are particularly vulnerable.

ENOC understands that the circumstances in which “children on the move” find themselves and the challenges they face are diverse and complex, requiring multilateral, comprehensive and holistic approaches. In this context, the members of ENOC agree that the following

⁴ Definition drawn from background paper of European Forum on the Rights of the child (2012) - http://ec.europa.eu/justice/fundamental-rights/files/background_cps_children_on_the_move_en.pdf

measures and recommendations should be endorsed, implemented and supported at European, national and local levels:

1. “Children on the move” are children first. Accordingly, fundamental principles with regard to children’s rights need to be mainstreamed into the development, implementation and monitoring of laws, policies, procedures and practices affecting “children on the move”.

The key principles in this regard as set out in the UNCRC are: children’s right to non-discrimination; children’s right to have their best interests treated as a primary consideration in all actions and decisions affecting them; children’s right to life, survival and development; and children’s right to express their views freely in all matters affecting them and to have their views taken into account in accordance with their age and maturity.

In particular, the right of “children on the move” to express their views freely should be ensured in all relevant procedures and decision-making processes, and where needed, he/she should be assisted by an independent interpreter. These views should be given due weight in accordance with the child’s age and maturity.

2. Appropriate child-friendly reception conditions should be ensured for all “children on the move”, even in the case of intra-European migration. This is a necessary prerequisite for the realization and the protection of all the other rights of these children.

In particular, from their arrival, all children should be provided with specific and comprehensive information on their rights in language they can understand, as provided in international and national legislative provisions. They also should have access to education and health services on an equal basis to other children within the jurisdiction of the receiving State. Giving access to all of these rights is crucial for the integration of children in the receiving society.

Migration policies in relation to “children on the move” require a range of measures that go beyond border controls and action against irregular migration. States should find durable solutions which respect human rights and the rights of children, using holistic, personalised and flexible tools and respecting their best interests as determined through formal processes.

3. Personnel dealing with “children on the move” (law enforcement authorities, judicial authorities, interviewers, interpreters, social and youth workers, health professionals, guardians, legal representatives, police officers and border guards, amongst others) should be properly trained to respect children’s rights, understanding these children’s particular communication and cultural needs and able to respond appropriately to signs of fear or distress.

4. Age assessment should be made in the child’s best interest, with the primary aim to ensure that the child is granted the rights and protection he/she is entitled to. Age assessment should primarily take place on the basis of documentary evidence. When documentary evidence is not sufficient, and in cases of serious doubt about the age of the child, further examination may be conducted as a measure of last resort. It should be carried out as quickly as possible, in the presence of a guardian and processed by independent medical as well as social care experts. Until the age assessment is completed, each person claiming to be a child should be considered and treated as a child.

Age assessment should include a combination of physical, social and psychological maturity assessments. The techniques used should respect the child's culture, dignity and physical integrity. The fact that some physical assessments may be particularly stressful, invasive or traumatic for children should be taken into consideration. ENOC expresses grave concerns about the use of X-ray in view of adverse effects on the child’s health, negative judgements by medical authorities on appropriateness and effectiveness and questionable reliability and accuracy.

The child should be fully informed about the process of age assessment and its consequences. The child’s views should be given due weight in accordance with his/her age and maturity and informed consent should be requested and obtained when medical/physical investigations are considered necessary.

Refusing to undergo an age assessment procedure should not lead to an immediate assumption of adulthood. Authorities should assess whether the refusal is motivated by reasons other than presumed adulthood.

In any case, age assessment should be open to legal remedy and there must be a reasonable period of time to ensure the individual can provide all necessary evidences for proving he/she has not reached adulthood. During the procedure, full protection should remain until a final decision is taken.

Given the variety of techniques related to age assessment, ENOC calls upon European authorities (EU/Council of Europe) to develop and promote good practices. In any instance where practices lead to conflicting results, the benefit of the doubt and the most favourable determination should always prevail. As a further step, on the basis of identified good practices, the EU may consider the adoption of a rule on the mutual recognition of age assessment decisions between the EU member states.

Given the potential impact of age assessment decisions on the child’s status - from full protection for children, to basic or no protection for adults - States should adopt appropriate measures to organise a smooth transition.

5. Immediately after the arrival of any unaccompanied/separated child, a skilled independent guardian should be appointed to support, advise and protect him/her until he/she is reunited with his/her family or receives an appropriate care placement. The

guardian, who is appointed to serve the child’s best interests, should ensure that responsible agencies safeguard the child’s rights and meet the welfare and care needs of the child. The guardian should have the authority to represent the child in all decision-making processes, if the child gives his/her consent.⁵

For all administrative and judicial procedures every child should receive, free of charge, the support of interpreters and independent legal advisers trained in working with children and young people.

6. Unaccompanied and separated children should never be refused entry to a country in accordance with the non-refoulement obligations deriving from international human rights, humanitarian and refugee law.

Any decision taken under the Dublin II and III regulations and concerning unaccompanied children seeking asylum should comply with the recent jurisprudence of the Court of justice. The latter underlined that the child’s best interests must be a primary consideration in all decisions adopted by the Member States on the basis of Dublin regulations. As a consequence, the Court states “where an unaccompanied minor with no member of his family legally present in the territory of a Member State has lodged asylum applications in more than one Member State, the Member State in which that minor is present after having lodged an asylum application there is to be designated the ‘Member State responsible’ ” for examining the asylum application (European Court of Justice, 6 June 2013, C-648/11).

7. Right to protection from physical and mental violence, abuse and neglect, as well as from all forms of sexual and all other forms of exploitation, must be carefully taken into account when protecting “children on the move”.

On arrival specific care should be ensured, in regard to the specific needs of “children on the move” in all educative, psychological and health aspects.

Child victims of trafficking are a particularly vulnerable group of “children on the move”. The response of many States to the issue of child trafficking, however, remains focused on the immigration status of the child and on their asylum application - the need to protect child victims often comes secondary.

Return to countries of origin without offering adequate support and without consideration for their best interest often results in putting children at risk of re-trafficking.

Relevant instruments and standards (at Council of Europe and EU level) concerning trafficking in human beings, especially child victims of trafficking, should be ratified, transposed and fully implemented without delay.

⁵ The child should be given the right to refuse/change the assigned guardian. The child should freely express motivated objections for such a refusal.

8. As a principle, ENOC reaffirms its firm opposition to any form of detention of children, be they accompanied or not, and whatever procedure they are subject to (whether asylum or return to their home country or the first port of entry in Europe).

ENOC invites all relevant European and international stakeholders and jurisdictions to exchange information and good practice on alternatives to detention. The development and implementation of alternative measures should be a key priority for national and European decision-makers.

ENOC stresses its concern about policies aiming at criminalising migration and underlines that in this regard, “children on the move” should never be subject to criminal procedure for reasons solely related to their immigration status or where their involvement in criminal activity has been caused by exploitation.

ENOC calls on European States and Institutions to ensure their policies, laws and practices are compliant with the relevant instruments on the protection of children, with particular attention to the UN Convention on the Rights of the Child.

ENOC underlines that in this framework “children on the move” should benefit from specific attention and enhanced protection given their vulnerability, particularly those separated from their family and unaccompanied.

Within the framework of the European Union, ENOC invites all institutions, in their respective competences, to pay due attention to the rights and protection of the child.

In this context, ENOC underlines the key role played by the European Commission in its duty to monitor the implementation of EU rules by member states. ENOC urges the European Commission to launch infringement procedures whenever children’s rights are violated.

ANNEXE II

Joint statement of the European Network of Ombudsman for Children (ENOC) on the occasion of the 17th ENOC General Assembly following the ENOC Annual Conference on “Children on the move: Children First!”

Urgent help required for Syrian children in refugee camps to avoid humanitarian catastrophe

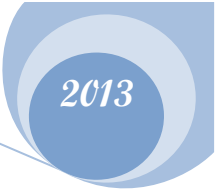
Last year ENOC already drew the attention of the Chair of the UN Committee on the Rights of the Child on the dramatic consequences of the armed conflict taking place in Syria on Syrian children.

Millions of Syrian children are currently suffering from terrible hardship in refugee camps.

The refugee camps do not have enough food, water, shelter and sanitation to deal with the basic needs of the children who are living there. It is September now and the coming winter could lead to a humanitarian catastrophe. The problems are so grave that even the UNHCR is only able to partly deliver the help that is required.

Seeing the appalling situation of the Syrian children in the refugee camps, ENOC members appeal to the European and international community to:

- 1) take quick and decisive humanitarian action to prevent the pending humanitarian catastrophe
- 2) accept as many Syrian refugee children as possible.



RIGHT TO PLAY

