I. ENOC

1. Introduction.

ENOC is a non-profit European association of independent children’s rights institutions (ICRIs). Established in 1997 and originally linking 10 institutions, the network has now grown to include 37 institutions in 29 countries. ENOC links independent offices for children from 19 countries within the European Union.

The objectives of ENOC as defined in its Statutes are:

- To promote and safeguard children’s rights and to work on strategies for the fullest possible implementation of the United Nations Convention on the Rights of the Child (CRC),
- To serve as a forum of colleagues for the active exchange of information, capacity-building and professional support among the members,
- To promote the establishment of 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’s core activities include:

- drawing on the collective experience of its members and the children they work with to contribute to the development and implementation of European policies and programs to promote the rights of children;
- promoting and documenting the exchange of learning and good practice between its members so as to enhance their effectiveness in promoting and safeguarding the rights of children;
- working to raise public and political awareness in the European Union and other European countries of the importance of guaranteeing the rights of children.

ENOC is actively associated with the European Parliament and the European Commission, especially in the context of the EU Strategy on the Rights of the Child. It also cooperates closely with the Council of Europe and other international organizations such as UNICEF and the UN Committee on the Rights of the Child.

ENOC holds an annual meeting, and working groups, and issues statements to sensitize decision-makers and to influence policy priorities.

2. ENOC activities concerning invisible children

ENOC issued position papers as presented below on the topics which can be related to groups mentioned in the background paper and qualified as invisible children.
As a principle, ENOC members underline that these groups of children despite their individual situation are still children first and do not lose the benefit and exercise their human rights.

- Juvenile Justice: Europe's Children's Champions challenge governments to respect young offenders’ rights - October 2003:
  - In this position paper, ENOC members expressed their concern “at the tone of political and media debate and the direction of public policy and legal changes concerning juvenile offenders in many of our countries”, especially
    - the trends to reduce the age of criminal responsibility
    - the trend to lock up more children at younger ages
  - They recommend that:
    - States should progressively raise age of criminal responsibility to 18.
    - Children should be held “responsible” for their actions in line with the concept of evolving capacities and in a manner which respects child rights.
    - State should develop innovative separate, distinct systems for responding to all juvenile offenders below that age with due consideration to all the rights of the child. This system should be focused on their education, reintegration and rehabilitation and not on criminalizing children offenders.
    - Thus, States should develop a range of alternative measures to divert children from the juvenile justice system. Adults involved in this process should receive specific training and re-training, emphasizing the human rights of children.
    - ENOC members emphasize that it is neither in the interests of children nor of the broader society to pursue measures which are purely punitive in intent. In this regard, custody should be used as a last resort except in limited situations and for legitimate reason, for instance, serious and immediate risk to others.
    - Children’s views should be listened to and respected in all aspects of their lives.
    - Victims of juvenile crime must receive appropriate reparation and support from the State.

- State Obligations for the Treatment of Unaccompanied Children - 2006:
  - ENOC members require from public authorities to ensure a better protection for unaccompanied minors and urge States to adopt legal frameworks and administrative practices which fully protect the rights of unaccompanied children.
  - In addition, ENOC members issued a second statement in the field dealing with the European Parliament and the Council ‘Return’ Directive (18.6.2008). ENOC members expressed their deep concern and in particular noticed that certain provisions allow detention and expulsion of unaccompanied minors. Despite vague clauses for respect of fundamental rights, these provisions appear to be rather wishful and do not guarantee the prevention of children’s rights violations.
  - In this order, ENOC members call for more attention be paid on the following elements:
    - All those involved in the consideration of children’s immigration or asylum status and its consequences should recognise that “childhood is entitled to special care and assistance”.
    - Unaccompanied children should not be prosecuted for illegal entry to the country or detained solely because of their immigration status.
    - Unaccompanied children should never be deported/expelled.
    - Clear rules, instruments and administrative systems, for the identification of the child, search for the family and investigation of the needs of every unaccompanied child should be established and

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1 Preamble, Convention on the Rights of the Child and article 25, Universal Declaration of Human Rights
applied in a respectful and child friendly manner by competent authorities.

- Immediately after arrival every unaccompanied child should be referred to the relevant judicial or other competent authorities and a skilled guardian should be appointed without delay

- **Age assessment** should only take place in cases of serious doubt and should be systematic, using independent experts and modern technological tools and include a combination of physical, social and psychological maturity assessments. In case of any doubt concerning the age of the involved person, the benefit of doubt should be given and work out in favour of his/her age declaration. Techniques for age assessment should respect the child's culture, dignity and physical integrity and should take into account that some physical assessments might be particularly stressful or traumatic for children who have suffered physical or sexual abuse. The age assessment should be open to revision if new evidence comes to light.

- The child should be informed of their rights, especially of the right to apply for asylum and its consequences and properly guided in how to exercise their rights in their own mother tongue or in a language that they can understand. Authorities should pay more attention in the possible traumatic experiences the child may have gone through. Communication with the child should be done: a) individually, b) through an interpreter or a person trained to communicate with children including those with particular needs (rather than only through written material), and c) in the presence of a guardian.

- Unaccompanied children should have access to education, vocational training and health provisions, on an equal basis to other children within the jurisdiction of the state.

- “ENOC defines the return of minors as re-integration into their social environment of origin (family, care institution or other), which should be sought only through assisted voluntary repatriation, and only if this is considered to be in their best interests, after careful assessment including due consideration of their views. Article 10 of the Directive does not guarantee re-integration, but leaves repatriation as a police task by providing only that ‘removing an unaccompanied minor from its territory, the authorities of the Member State shall be satisfied that he/she will be returned to a member of his/her family, a nominated guardian or adequate reception facilities in the state of return.’”

- Professionals dealing with unaccompanied children (interviewers, interpreters, social and youth workers, guardians, legal representatives etc) should be properly trained and informed to respect children’s rights, including their communication and cultural needs and to be able to respond appropriately to signs of fear or distress.

- **Children with disabilities** - November 2007
  - The members of ENOC call upon their governments to ratify - without delay - the UN Convention on the Rights of Persons with Disabilities.
  - The position paper is based in 8 fundamental actions that governments should take into consideration:
    - **Awareness raising** by providing general information to children and young people with disabilities but also to general public on disability with the aim to combat stereotypes and promote positive images of disabilities
    - **Participation**. Listening to children as experts on their own life and their life conditions and involve them in the fullest possible way in policy and decision making.
- **Inclusion.** Take all the measures to fully include children in all aspects of life on an equal basis with others children especially with regard to education.

- **Care in residential or disability-specific centers or others settings.** Use care in residential or disability-specific centres only in the best interests of the child and never just because of a disability or financial considerations.

- **Support to family and siblings.**

- **Abuse and violence.** Children with disabilities are at greater risks to be victims of abuse and violence. Member States should intensify their efforts to prevent and protect children from such breaches of their rights.

- **Accessibility.** Ensure access for children with disabilities to all aspects of life and all public areas including schools, colleges, shopping areas; public transport; and play and leisure facilities.

- **Health.** Provide children with the best possible health care and prohibit measures and acts that endanger their mental and physical health, well being, life and dignity.

3. ENOC members activities concerning groups of children who could be recognized as invisible children

3.1 Individual complaints

Many of ENOC members receive and handle individual complaint and have unique, evidence-based knowledge of challenges facing individual children. In deed, submitted complaints constitute a source of information for the Ombudsperson as to the scope and extent of violations of children’s rights. Through the complaints procedure, the Ombudspersons monitor and evaluate the compatibility with the CRC and other international instruments of national existing legislation, policies, administrative decisions and practices.

An example of complaint s it can be observed on the graphic produced below, in 2009, the French Ombudsperson received and handled complaints related to:

- Foreign minors -16%
- Complaint related to children in institution care – 10 %
- Disability - 5%
3.2 Alternative reports to the UNCRC

As independent children’s rights institutions, ombudspersons for children issue alternative reports to the United Nations Committee on the Rights of the Child and make, on the international level, their own comments and recommendations to improve domestic legislation and practices regarding children rights. Recently, the United Nations Committee on the Rights of the Child received reports from Denmark, Finland, Norway, Spain, Sweden, France, Belgium, United Kingdom of Great Britain, Slovak Republic, Ireland, and Lithuania. Many observations made in the parts below are extracted from the Ombudspersons’ alternative reports.

3.3 Statements/Research and Policy Recommendations

On domestic level, many ombudspersons have focused their energy to review, analyze policies, undertake research and publish thematic reports or statements in order to inform, influence and even challenge Government and others public authorities where and when legislation, policies and practice with children and young people are not in line with the standards laid down in the Convention on the Rights of the Child. The parts developed below are samples of activities undertaken by ENOC members in 2009 or 2008. This shows that the most of matter of concern expressed by Ombudsperson is focused on children who can be included in the concept of invisible children. These activities demonstrate the key role plaid by all the independent institutions in bringing improvements in children and young people’s lives.

3.3.1 Austria

The ombudspersons’ offices in place in the different Austrian provinces issued together the following statements on:

- Child care
- Asylum and refugee laws
- Child support
- National Action Plan ‘Integration’
- National Action Plan ‘Trafficking in Human Beings/Children’
- Protection Against Violence Act
- Family Law Reform Act

3.3.2 Belgium

3.3.2.1 French Community

These are some of the topics covered by the institution in 2009:

- Detention of juvenile offenders,
- Children exposed to domestic violence,
- Confinement of children in institution,
- Asylum issues,
- Foreign minors in detention centers.

3.3.2.2 Flemish Community

Last year, the Ombudsperson formulated recommendations on:

- Rights of children with disabilities in school,
- Demand for urgent ratification of the UN-Convention on the Rights of Persons with Disabilities,
- Discreet birth,
- Childcare.
- Social protection of minors,
- Children in poverty,
- Housing problems for youngsters,
- Detention of minors,
In October 2007, the Flemish institution published a report on the complete asylum-process from a children’s perspective: arrival, getting a residence permit, living conditions during the procedure, access to school and other services (social, medical...), expulsion, detention... Given the importance of the issue, the Ombudsperson has decided to carried out a close follow-up with different partners in the field especially ENOC. Recently, the institution has started on new projects in particular detention of minors.

3.3.3 Lithuania

The Children Rights’ Ombudsman during the year 2008 provided conclusions, comments and proposals on several projects prepared by state institutions, participated in preparation of legal acts and on her own initiative prepared legal acts as well as proposals on legal acts regarding the improvement of children rights policies. The ones that should be mentioned are:

- The system of care institutions,
- The legal acts concerning the protection of children against all forms of violence,
- UN Convention on the rights of persons with disabilities and ratification of it’s Optional Protocol,
- Juvenile delinquency,
- Children whose mothers are imprisoned and their right to grow up with their mothers,
- Projects or existing programs of National Social integration of persons with disabilities.

3.3.4 France

In June 2008, the children’s ombudsperson organized a conference on the subject of unaccompanied foreign minors, which put forward 25 recommendations to harmonize professional practices and to improve the way in which unaccompanied foreign minors are taken into care, around 5 priorities including an immediate protection for every child and their taking into care in an emergency facility, monitored by an adapted administrative and judicial procedure to look after their interests.

3.3.5 Cyprus

The Commissioner submitted to the Cyprus Parliament recommendations mainly on Refugee Law and on the legislation on juvenile justice. Public interventions were carried out on the violation of rights of children with special needs in care institution and a study was conducted on “Children’s right to participation in out of home care”. The study is focused on whether the participation of children who live in institutions care is ensured in the process of decision making in all the matters that affect their lives.

3.4 Young people Voice and Participation in the Ombudsperson activities

Among the core area of their activities, the Ombudspersons spend many energy in ensuring that the views of children and young people are routinely asked for, listened to and that outcomes for children improve over time. Providing for and promoting children’s right to be heard and to participate in decision making processes affecting them is one of their first priorities. “Therefore, ENOC members have experience of designing and employing a variety of mechanisms that enable children to be consulted and to participate:

- youth advisory panels,
- reference panels,
- national consultations,
- young ambassadors network,
- surveys and child participation exercises
- etc.”
Through this direct work with children and in particular because of the involvement of children and young people in their work and office, ENOC members hear regularly from them about issues that are of interest and affecting them. Fundamentally, this enables Ombudspersons to nourish others activities and make recommendations in accordance with the children and young people needs and concerns.

3.4.1.1 Youth Advisory Panels

Many ENOC members are provided with a youth advisory panel or have regular contacts with similar structures, groups helping them to remind permanently the children point of view.

These youth panels have different tasks according depending on the ombudsperson offices. They act mainly in an advisory capacity on topics about which the ombudsperson needs children opinion. Some of them also carry out specific projects. For instance, the youth panels in Belgium which is composed of 8 young people promote, as volunteer, children rights in schools or others children settings.

The recruitment of the members of each youth panels is based on diversity: gender balanced, origin, social background, education background, family situation, etc.

In France, the young advisors panel is composed of 20 young people who live in different places of residence like big or small cities, urban or rural environment. Disable children are systematically integrated. The French ombudsperson makes sure to include children living with their family as well as in institution care, and in boarding schools.

In Greece, young advisors are representative of Greek society as a whole with regard to their social, educational background (professional education) and the panel includes youths with disabilities, youths living in care institutions, and youths of migrant families.

3.4.1.2 Focus groups

Some ombudspersons (Greece, Sweden, Norway, Croatia, Ireland, etc.) have initiated consultation directly with specific groups of children in order to emphasize the importance of consulting them on their daily life and give them opportunity to be heard, to make recommendations concerning the main difficulties they encounter in their life.

From January 2009 to October 2009, the Irish Ombudsperson for Children Office carried out a project dealing with separated children. Its aim was to better understand the lives and level of care afforded to separated children, to facilitate the identification of key issues by separated children and to develop recommendations for relevant authorities.

35 separated children, 3 project team workers (members of the Youth Advisors Panel) and Ombudsperson Office staff have been involved in the project. The project team visited all the hostels and all children received an individual invitation to participate at an “Open Day” activities organized by Ombudsperson Office. Special software was developed through which children could type a message, record their voices or make a video. Young people were invited to choose how they wanted to share their experiences. The outcomes of the project consist in a story book, a creative art, a book and a project report the follow-up of which will be ensured by the Ombudsperson Office.

In Norway, the Ombudsman for Children organized meetings with children that have faced situations of domestic violence, sexual abuse, or incest and ministries and their services in charge of dealing with this sort of problems.

3.4.1.3 National Consultation

The French ombudsperson for children launched a national consultation (Parole aux Jeunes) with children on 10 topics (Family, Education, Health, Discrimination, Justice, Disability, Poverty, Privacy and the risks linked to Internet, Violence, Participation)
The children’s opinions and recommendations were collected in a “Gold book” and presented to the President of the French Republic and to the main public authorities.

The Finnish Ombudsperson for the rights of children published in early 2009 a study, entitled “More similarities than differences”, of the views of Roma children about their lives. This study was based on interviews with 36 Roma children and youth and was conducted together with the University of Jyväskylä and supported by national and local Roma Councils.

Recently, the Scottish Commissioner for Children launched a national consultation to give children the opportunity to participate and shape the work of Scotland’s Commissioner for Children and Young People.
4 Analysis

4.1 Collecting data

Through the concluding observations made by the Committee on the rights of the child and alternative reports issued by Ombudspersons, it appears that many European countries are provided with independent or state agencies/structures in charge of collecting, analyzing and reporting data with regard to several children issues. Thus, many children are visible to the public authorities which are in position to assume their specific protection and undertake to build up policies in the different fields.

This first observation should be mitigated for some European countries or immediate neighborhood countries. According to the Committee, data collection in Moldova is not sufficiently developed and systematic and do not cover all children issues. Thus, the Committee recommended to “strengthen mechanisms for systematically collecting and analyzing data that is disaggregated by, among other things, sex, age and geographical location, on all persons under 18 and for all areas covered by the Convention”.

Nevertheless, even if entities do exist and collect reliable data, member states failed in creating a centralized system that could provide an overall view on the situation of children, needs, well being and rights. For instance, as concerns France and Sweden, the Committee reported a lack of “harmonized nationwide system” with a “coordinated approach between all entities collecting data on children”. This coordinated approach should be in charge of ensuring that the data collected is evaluated and used to assess progress in children rights, but also to identify problems and to inform all policy development for children.

In addition, some groups of children are not concerned by data collection and policy assessment. Public authorities failed to develop adequate data, research in a number of areas of children’s lives and about the lives and experiences of specific groups of children. This leads to absence of reliable, up-to-date data for a number of issues and undermines attempts to monitor implementation of the CRC. Many groups of children thus face breaches of their rights without being identified and they remain powerless to make them respected and applied. Following the Sweden report, the Committee recalled its concerns “at the lack of statistical data regarding the total number of children with disabilities, child victims of abuse aged 15 to 18 years, and the imprecise total number of children victims of sexual exploitation”. As concerns Ireland, the Committee in 2006 welcomed the establishment of the first longitudinal study, but expressed concern at the lack of systematic and comprehensive data which would enable the analysis of the situation of particularly vulnerable children, including victims of abuse, neglect or ill-treatment; street children; children with disabilities; and children in institutional care. Then, the Committee recommended to provide the coordinated approach “with a disaggregated method in order to cover all areas of the CRC” which should be used for the creation, implementation and monitoring of policies and programs for every children.

According to the Irish Ombudsman for Children, “gaps in law, policy and practice mean that some children remain vulnerable and are not receiving the full support of the State”. In that framework, some Ombudspersons for children rights have created their own tool/method to carry out, internally, assessment of their office strategies, practices, activities in particular the ones related to reviewing policies or legislation, and identify and measure their effect on children. It also served to raise awareness of children interests and rights.

In Scotland, the Commissioner for Children and Young People has developed a Children’s Rights Impact Assessment model which comprises eight stages: identify, map, gather, consult, analyse, recommend, publicize, and monitor. This method is based on the CRC as the starting point and aimed at:

- Promoting and raising awareness of children’s rights as set out in the CRC and other relevant international instruments,
- Ensuring children’s rights and interests are taken into account at the earliest possible stage in policy development and encourage policy makers to ensure policies are CRC compliant
- Promoting more reasoned decision making and avoid or mitigate any negative impacts which policies may have on children,
In the case of government, breaking through departmental barriers and encourage the coordination of agendas in, for example, health, social care and justice, involving children and young people in the development of policies that affect them”.

This type of assessment is also used by Sweden, Austria, Greece, and Northern Ireland ENOC members. The ombudspersons offices use these tools internally but encourage others domestic authorities as well as any children settings and any stakeholders who work with and for children to systematically introduce and implement these tools at the early stage in their decision including budgetary decision making, activities, current practices and management strategies to ensure that children rights are taken into account.

ENOC members encourage and recommend carrying out longitudinal studies with multidisciplinary approaches. They also emphasize that children voice must be heard in these processes.

It’s also important to mention that ENOC in particular some of its members (Scotland Commissioner for Children and young people and with the Swedish Ombudsman for Children) are also cooperating with UNICEF Brussels’ office on an project undertaken by UNICEF. This project consists in developing high-quality tools and training package around a whole series of child rights issues with the aim to improve the capacity of targeted stakeholders and key actors to identify and address child right issues in their work and to better integrate children's rights and children’s best interests into a whole range of relevant political, legal, budgetary and programmatic actions and structures.

All ENOC members are encouraged to participate in the project by providing examples and expertise by sharing case studies and to use the tools (once finalized) and to promote them with the partners.

4.2 Groups of Children at risk of becoming invisible children

A study realized by Dr Ursulla Kilkelly, Senior Lecturer, Faculty of Law, University College Cork, and commissioned by the Irish Ombudsperson for Children in August 2007, make appear that numerous children qualified as particularly vulnerable and therefore invisible “face especially difficult, complex and inter-linking barriers to the enjoyment of their rights in a range of areas” and suffer multiple breaches of their rights. They are “marginalized and voiceless in seeking to have those rights”. Indeed, public authorities, decision makers fail to ensure them an effective, adequate and comprehensive protection of their rights in general policy as well as in specific children policy. Therefore, those children do not benefit from coherent policy, and support or services are not delivered in a proper manner. As a consequence, they are marginalized by society and could suffer from exclusion and discrimination. Eventually, children are not involved in the decision making process, are rarely consulted on their own lives and the environment they grow up even if they are autonomous rights holders.

Regarding all these criteria’s and keeping in mind that identification of these groups of children do not deny that others groups of children also experience barriers in the realization of their rights, the children who particularly appear as invisible are:

- Children in care system
- Children in conflict with the law
- Children at risk of abuse and neglect
- Children with disabilities
- Immigrant and Asylum seeking children
- Children belonging to a minority
- Children living in poverty
- Homeless children/Street children
- Children with mental health problems
- Children travelers
All these groups of children have clearly been identified by the Ombudspersons for children rights who regularly and on every occasion express their deep concern as regard their situation, the difficulties they face in the realization of their rights and thus, challenge their national authorities to undertake the necessary changes and improvements.

4.3 Birth registration

4.3.1 France

In France, there is no major gap concerning birth registration except in Mayetta and Guyana. In its alternative report, the French ombudsperson reminds that birth registration is still a problem in these two “departments”. This gap has a major impact on the full access by children to their fundamental rights especially access to education, professional training, health care services, etc.

As concern the situation in Mayetta, the French Ombudsperson visited in October 2008 different settings and met with the authorities in charge of children issue and she expressed her concerns about birth registration. Regarding the numerous individual complaints, the authorities have created a special commission whose priority is to establish birth certificates. To date, more than 14 000 requested are pending.

The main difficulties encountered with birth registration are related with families who live in rural or remote areas where birth registration services are lacking and access to them may, refer to their distance, pose additional problems. Cultural causes may also complicate this process. For instance, in Guyana, after child birth, the father has to remain at home during two months.

Following the report presented by the French government and French Ombudsperson’s alternative report, the Committee for the Rights of the child recalls the French authorities to spend more energy to make children recorded these two “departments” and deliver the relevant identification documents.

4.3.2 Moldavia

In Moldova, there are no available data on the issue but the ombudsperson reported that children who are most likely to be unregistered are children from Roma people and the children from socially vulnerable families.

The main reasons are linked with financial problems, ignorance, illiteracy, and last but not least, cultural factors. Since 2009, the public authorities deliver free first identity card and passport.
4.4 Groups of children

4.4.1 Children without parental care

4.4.1.1 Children in institutional care

Children without parental care are particularly reliant on the State to support them realizing their rights and to ensure their complete protection. Despite their conventional obligations, Member States fail to ensure a full protection to many children who remain without parental guidance and protection. Over the years, Ombudspersons for children have expressed their deep concern on many issues in this area and have focused on their activities to help the public authorities making progress and ensure a fullest possible implementation of the CRC on the benefit of all these children.

Lack of coherent and child comprehensive policy in the field
In March 2007, after being appointed as Commissioner for children in Malta, Carmen Zammit launched a project aiming to lay down the foundations for a National Policy on children in the care system with the collaboration of the Social Affairs Committee of the Parliament and to address the lack of a comprehensive Children’s Act.

The main reasons of such concern were:

- Children are currently placed in out-of-home care as a result of a lack of others options.
- This is often a long-term solution, rather than a temporary arrangement with the aim of reinstating the child within the biological family where possible.
- There is a discrepancy between children entering care under a care order, and those in voluntary care in terms of services and assistance.
- A lack of quantitative data and research existing in the field.

A focus group of professionals working in child protection on the local level was creating and aimed to identify gaps and made recommendations on:

- The effect of residential placement for children under 5 years old,
- Mental health needs of children in care,
- To explore the long term outcomes of youth leaving care.

While the research project is still ongoing, some results have already been made available:

- The placement of the child should be a placement of choice, following an evaluation by a Family Assessment Unit which then determines the kind of placement in the best interests of the individual child.
- A binding contract with the family should regulate the placement of the child with clear time frames, allowing for the State to then take responsibility for the child if the provisions of the contract are not met.
- State should diversify alternatives services and options. Out-of-home care should be just one in a range of multiple services. This would include prevention programs, community-based services, day shelters, foster care, etc.

In 2007, the Lithuanian Ombudsman participated in numerous meetings and made many proposals to challenge the authorities in the field of children care. The Government approved a strategy of reorganization of Child care system and its implementation plan for the 2007-2012 period in order to optimize network of child care institutions, to reduce the number of children under the care and the number of children under the age of 3 years sent to care institutions, to ensure principle of child care in the family, to improve social integration of children who have lost care of parents. More services for children and their families should be also provided on community level.

Overcrowded residential care
The General Comment N°7 issued by the UN Committee prioritises “family type alternative environment over those residential.

During the ENOC Annual Conference held in Paris in September 2009, the Deputy Ombudsman for Children, Catalonia, presented recent statistics on the situation of children in care including those placed in institutions or in foster families. According to the statistics, over the last 6 years
an increase of the percentage of in care children in institutions has been observed (33, 8% in 2008). The statistics shows that the institutions are getting more and more overcrowded as more and more children are placed in institutions instead of in foster families. More often children experience long stay institution care; more than 3 years. Among the numerous findings drawn up from the statistics, he stated that there are deficits in regulations of the institutions’ material conditions, institutions appear overcrowded and a lack of foster families and deficits in foster families’ placements.

Then, the office of the Deputy Ombudsman for Children for Catalonia addressed a set of recommendations concerning among others the legal regulations, the information management, prevention actions, sufficiency of resources, professional training, networking etc.

**A lack of preventive and alternative measures to residential care**

In Denmark, some nine children per day are placed in care outside the family. This roughly represents on an annual basis 15 000 children. In its alternative report, the National Council for children expressed its deep concern regarding the existence of serious problems in the area of alternative care in Denmark. The Council has recommended that the government as well as local authorities should ensure the provision of more wide-reaching preventive measures of the highest possible standard.

The Lithuanian Ombudsperson stressed out that a child could be placed in institution only in exceptional cases when all tools to help the family and a child have been used. Institution have ensure qualified assistance with regard to child needs and create a close to family environment (children living in small groups, close relationship with employees and a lot of attention to a child, ensure a close communication with the parents, regular evaluation of the situation within the family in order to return the child to the family as soon as it is possible, etc.). Keeping this in mind, the ombudsperson collaborated with others state agencies to develop social services for the families and children, implement reorganization of the system of children care institutions and the promotion of foster care, participate to the improvement of legal basis as well as the system monitoring.

In France, a new law reforming child protection was adopted on 5 March 2007 and was warmly welcomed because of a large consultation process. This law has diversified the ways in which children can be taken into care by reinforcing the possibilities for the one-off or episodic taking into care of a child outside of the family, without this necessarily being the placement of a child in an institution or a family home. Nevertheless, in cases in which it appears to be necessary to carry out the placement of a child in order to ensure his or her protection, the Ombudsperson still notes that, looking beyond problems related to the disputing of the placement, of which it is sometimes informed – in terms of both the modalities (type of placement, maintenance of links, splitting up of siblings) and the reasons for the child being taken into care – far too often the decisions are poorly, or hardly, explained to the children and to the adolescents and this often leads to them running away or even trying to commit suicide.

**Instability of the placement**

A study carried out by the Danish National Center for Social Research indicates that 41% of children placed with foster parents, in 24-hour care, or in social care homes experience a lack of stability in the caring environment. About one fourth of placements break down shortly after being established, either because the child leaves the placement or because the placement is forced to give up. Some of the reasons underlying these situations are related to the lack or inadequacy of case consideration prior to placement. For instance, local authorities either wholly fail to carry out the obligatory investigations of the child’s overall situation, or carry out these investigations unsystematically, inadequately and without inclusion of the child in the process. Furthermore, they fail to draw up obligatory plans of action for placements on the basis of investigations.

**Short term and long term potential effects on children**

The Danish Council pointed out the lack of documentation as to the effects of placement. “Similarly, there is a lack of scientific knowledge as to the significance of the child’s age in
relation to the effect of placement.” The National Council calls the government for reinforcing and further developing scientific knowledge as to the various aspects of placement in care outside the home, thereby providing for greater comparability and overview.

Observing a lack of research and scientific studies in the field, the Malta Commissioner commissioned a research group that stressed out some potential effects on the child. According to them, residential care causes for children placed under the age of 5 years attachment difficulties including indiscriminate friendliness, overfriendliness and/or dis-inhibited behavior and problems with socio-behavioral development, which tend to be carried on later in life. Since the quality of the primary attachment relationship between infant and caregiver has an impact on neurobiological development, the difficulty in maintaining a strong attachment relationship in residential settings is likely to impact negatively brain development on infants in these settings, possibly causing parts of the brain to atrophy. The impact of institutionalization on cognitive development often depends on the duration of institutional care, the age of entry, and the conditions within the institution. Early intervention through removal of the child into family based care can result in recovery. The research also focused on the mental health needs of children in care, particularly those ages between 5 and 16. Given the likely possibility of traumatic experiences of many children within the care system and their high levels of need, early identification of mental health needs is necessary. Studies indicate a higher prevalence of mental health disorders and higher rates of disturbance in looked-after children by comparison with other children, including conduct disorder, oppositional defiant disorder, hyperactivity, emotional problems and attachment problems.

Eventually, the research underlined the long term outcomes of youth leaving care. This shows that youth leaving care have a higher likelihood to be undereducated or not completed high school, unemployed or under-employed, have lower income or living below the poverty line, become a parent at a younger age, be incarcerated or involved in the criminal justice system, experience homelessness, live in unstable housing arrangements, be dependent on social assistance, have mental health issues and be at higher risk of substance/alcohol abuse.

Maintaining links
The French Ombudsperson noted that the problem of maintaining links is regularly raised in the complaints that are brought to her attention. Structures that are responsible for supervising and monitoring the re-establishment of links between the children who have been placed in care and their parents are often too far away or are not able to organize the visits because they are overwhelmed by the sheer volume of requests. She therefore calls for the action and support plan for parents, as well as, where necessary, for siblings and grandparents, to be systematically specified in the “child’s plan” that has been envisaged in the law. She also believes that it would be appropriate to further develop the role of the local authorities in charge of child protection as a point of contact, so that it can work more closely with the parents.

Finally, the children’s ombudsperson also made recommendations on maintaining the emotional ties that have been established between the children and the foster families who have looked after them for many years. The decisions taken to change foster families must be better explained to the children. Similarly, the child, should he or she wish to do so, be able to maintain links with a family in which he or she has spent many years and with which emotional ties have been created.

The Ombudsperson for Children of Lithuania also insisted on this issue during the ENOC Annual Conference. She underlined that it is in the child best interest that family links of children living in care with relatives but especially with brothers and sisters are maintained or restored.

Child opinion and participation in the process
In Cyprus, the Commissioner for Children launched a study on the right to participation of children living in institution care. The Commissioner recommended the set up of regular interviews with children living in institutions (the right to refuse such interviews is preserved) in order to make sure that their views on matters affecting them directly or indirectly be heard. In
the same context, the necessity to set up regular interviews with the staff of the institutions, the need to establish groups which might carry out additional investigations following information received during these interviews, has constantly been recommended by the Commissioner. A manual for professionals has been published and contained a clause encouraging the participation of children living in institutions in the decision making process concerning them.

Which aftercare support for young people leaving care?
In Ireland, the Ombudsperson for children expressed a deep concern about the lack of any statutory obligation on the State to provide aftercare support to young people leaving care. She explained that, at present, there is no obligation on the state to provide aftercare services to young people once they reach 18. Thus, children who may have been in the care of the State for years are quite abruptly deprived of a right to essential support. While some children in this situation may receive support beyond their 18th birthday this practice is not consistent and it is not a statutory entitlement.

This concern is totally shared by the Scottish Commissioner. Young people in institution care should be able to stay in care until they are ready to leave – at least until age 18. However, while law and policy reflect this, in practice many young people are “pushed out” at age 16. The Commissioner undertook research to explore this and engaged in dialogue with some of the local authorities which appear to have the greatest problems. This has resulted in promises to change policy and practice. A leaflet was published by the Commissioner for young people to advise them of their rights and have since produced a mock magazine for children and young people.

This work has been embraced by Scottish Government and remains high on the priorities for developing improved services for young people leaving care.

Monitoring the system care
In Ireland, The Ombudsperson observed a lack of independent inspection, monitoring for children in residential care.

In Denmark, a legal framework related to monitoring in the case of placement exists and requires two types of monitoring: individual one related to the child, whereas general monitoring targets the institution. Nevertheless, in practice, many gaps have been highlighted by the National Council for children. Even if the Act on Social Services entitles local authorities in which the placement is situated to proceed with regular monitoring and ensure that it conforms to the standards applied in the approval, many of the residences care reported to not have been visited or only visited. Only a few of them claimed to have received three or more visits by the authorities.

4.4.1.2 Unaccompanied minors

Unaccompanied minors’ situation and treatment is one of the top matters of concern for all ENOC members with regard to the issues described below. These following are not exhaustive points but they demonstrate that child’s best interests are not a primary consideration in the decision making process related to those children and that immigration control often takes priority over human rights obligations. As concerns each of these issues, child’ views should be heard and taken into account at each level of the process.

Lack of data

Many ENOC members pointed out the lack of reliable and sufficient data related to unaccompanied/separated minors. The reasons of this gap could stem from the diverse profiles and situations of the children and consequently the difficulty for public authorities to identify and spot all these children who mainly tend to run away and escape from specific care and assistance. For instance, in France, there are no firm figures regarding the number and the influx of unaccompanied foreign minors, although it is estimated that there are between 4,000 and 5,000 of them every year.

On March 2009, the Welsh Commissioner published a study “Bordering on concern-Child Trafficking in Wales” realized by ECPAT as to the extent of child trafficking in Wales and the
necessary measures that have to be undertook. This study established a close link between child trafficking and separated children issue in Wales; “Children who are victims of trafficking may be unaccompanied children seeking asylum or they may be European Union citizens with a right of entry to the UK, or they may have entered the UK accompanied by an adult or arrive in the country on a valid visa. The one factor that unites them is the fact that none are living with their parents or a person who has obtained legal guardianship of them. Therefore they are described as a ‘separated child’ as they are “without the care or protection of their parents or legal guardian and as a consequence suffer socially and psychologically from this separation”. Then, the study underlines the “significant gap in data on separated children in Wales. The exact numbers of unaccompanied asylum seeking children in Wales remains unknown since this information is not collected by the Home Office”.

Lack of specific care and assistance
Despite their disparate individual situation and profile, all unaccompanied children should be provided with special protection in terms of immediate care and assistance measures as well as adequate and long term care solution because of the danger and risks they face being without parental/legal representative care. These measures should be undertaken following an initial assessment and further serious investigations including interview with the child on personal details and background.
First, it has been observed that this conventional obligation spelled out in particular in the CRC is not well respected as many Member States deny entry to their territory and thus the benefit of specific care and to the state protection.

Secondly, many ombudspersons expressed their concerns as to the inconsistency of care and support provided for unaccompanied minors.
In England and Wales, despite Government guidance recommending that separated asylum seeking children should be accommodated under the Children Act 1989, many local authorities are either providing less comprehensive support under the same Act or they are removing these children from care at 16 years old rather than looking after them until they turn 18 years old. Such practices are discriminatory and these children are being removed from the care system without due regard to the law or their welfare. Local authorities report a lack of resources and outstanding immigration issues as barriers to meeting the needs of these children.

In Belgium, the two independent institutions for children have pointed out the lack of a multidisciplinary screening pertaining to the support and assistance needs of the unaccompanied minors. The cooperation protocol between the federal authorities and the Communities on the care for unaccompanied minors still needs to be finalized.
Recently, the Ombudsperson for children for the French Community, Belgium, has joined a group of institutions and associations to denounce the lack of special care and assistance offered to foreign people and especially to unaccompanied minors. Indeed, even if legal provisions state that each unaccompanied child must be accommodated in specific center, many children are not offered accommodation in reception center because of these structures are overcrowded (for those who do not seek asylum) or are housed in centers for adults or are accommodated in hostels (for those who are seeking asylum). As a consequence, many children remain in the streets, homeless, without any adult guidance and are at greater risk to be victim of trafficking, violence, exploitation and disappearing.

In Ireland, the Ombudsperson for children reported that approximately 180 separated children are in Ireland and many of them are accommodated in hostels thus receiving a far lower standard of care that Irish children living in institutions. These hostels are not registered in a normal way and not inspected. Moreover, these children are dealing with an asylum process that doesn’t take into account their age or vulnerability. According to media, approximately 400 separated children have gone missing since 2002.

Children disappearing
In Denmark, children are housed in special centers manned by specially trained staff and are assigned a personal representative to safeguard their interests. Nevertheless, figures from
Danish Red Cross show that between 60 and 70% of these children disappear within a few weeks, often journeying further toward another country to be reunited with family who can assist them in seeking asylum. The National Council for Children finds cause for great concern in the fact that so many children disappear in this way into an uncertain destiny. The UN Committee on the Rights of the Child recommended in its concluding remarks in 2005, that the Danish state initiate an investigation into the high number of refugee children who disappear from Danish reception centers. Such investigation has yet been initiated. Moreover, the whereabouts of the 605 children who have disappeared since 2002 remain unknown, these children being “departed, assumed departed or still registered as absent”. The National Council for children recommended that the government should initiate specific preventive measures to combat the disappearance of unaccompanied asylum seeking children.

**Deportation**
In France, the Ombudsperson for children in her alternative report pointed out that it would appear that some minors are sent back to their country of origin or transit country without even having the chance to meet authorized associations in the holding area. Consequently the State Procurator is not able to appoint a guardian in charge of trusteeship if he or she has not even been informed of the unaccompanied foreign minor’s arrival.

**Detention-Deprivation of liberty**
In France, children can’t be detained because of their immigrant status. Nevertheless, French authorities continue to deny entry to territory and maintain children in holding area in particular in Roissy-Charles de Gaulle Airport, Paris. This situation has been qualified as detention by the European court of Human Rights in the Case Amuur v. France, 1996. This holding area situated on the French territory remains out of the common legal provisions application and the rights of the child are not fully respected. Indeed, minors aged over 13 are not separated from the adults (although a legal provision is being prepared) and minors under the age of 13 are placed in a hotel at Roissy airport. While unaccompanied children arrived overland in France can’t be returned, children detained in holding area can be returned to their country of origin or transit country without even having the chance to meet the authorized associations. (as mentioned above). Therefore, in these areas, children remain out of the State specific protection and are at risk to be victim of exploitation, neglect, violence. State denies them to the protection ensured by the law of 5 March 2007 on child protection to each child who is without parental care. This situation is not with respect with the General Comment N° 6 of the Committee on the rights of the child which recall that “State obligations under the Convention apply to each child within the State’s territory and to all children subject to its jurisdiction. These State obligations cannot be arbitrarily and unilaterally curtailed either by excluding zones or areas from a State’s territory or by defining particular zones or areas as not, or only partly, under the jurisdiction of the State”.

**Guardians**
In many European countries, the ombudspersons have noticed:
- A shortage of guardians,
- A delay in appointing a guardian,
- Guardian are not systematically appointed,
- The number of unaccompanied minors per guardian also differs strongly, as a result of which there is a risk that the quality of the guidance is not equally good for all youngsters,
- The quality of the guardian system is not sufficiently elaborated. For instance, in Belgium, some guardians are professionals, others are voluntary workers. In Norway, the Ombudsperson has pointed out the guardian system caters insufficiently to the needs of the children and urge for the building up of a national model that can provide a effective protection of the children and their rights,
- Many lack of basic training in children’s needs, the scope of the task, the asylum process and on the rights of the child,
- A lack of clear mandate with clear tasks.
In her alternative report, the Ombudsperson for children in Ireland pointed out that children seeking asylum do not have access to an independent guardian or adviser. This observation is also true for United Kingdom as the UK Government asserts that a formal “guardianship scheme” is not necessary or that existing arrangements are adequate. The 4 Ombudspersons recommended in the last common alternative report that legal guardian should be appointed as soon as an unaccompanied asylum seeking child is identified and the arrangement maintained until the child reaches 18 or has permanently left the UK.

**Age Assessment**

In France, there is the unresolved problem of the unreliability of bone testing to determine the real age of minors, despite the opinions given by the most senior ethical and medical authorities. In Norway, authorities use dental examination to determine the age of asylum seekers claiming to be minors. The methods used are highly disputed and the Ombudsman for Children is concerned that the tests are inadequate.

In UK, since 2004, 40-45% of all those claiming to be unaccompanied asylum seeking children have had their age disputed (between 2,000 and 2,500 individuals a year). The majority of age-disputed cases remain unresolved a year later and the individuals concerned continue to be treated as adults. It appears that the policy of applying the “benefit of the doubt” to “borderline” cases is not being adhered to and an informal higher threshold is being operated by immigration officers. The ombudspersons strongly objected to Government proposals to introduce dental x-ray procedures to establish the age of asylum applicants on the grounds that they are unethical, unlawful and cannot predict chronological age any better than non-invasive methods.

In general, ombudspersons require that more research should be done on the quality of age assessment, including assessment of the ethical aspects of carrying out medical examinations for administrative purposes only.

**Discrimination related to the access to education and health care and services**

In Sweden, the situation for more than 250 unaccompanied refugee children is precarious since there are few municipalities that are willing to receive these children. This implies that the children will remain several months in temporary housing without proper education or adult guidance. The Government has not implemented the Committee’s recommendation to ensure that all children enjoy the right to education, although certain measures have been taken. Recently the Government announced that an investigation warmly welcomed by the Office of the Children’s Ombudsman, on the right to education for these children will be launched.

**Lack of training of professional involved with children**

According to ENOC members, all professionals including interpreters, lay assessors, judges in the migration courts, social workers should be trained in issues that concern unaccompanied children.

**Specific situation of children seeking asylum**

Asylum-seeking children are vulnerable and in danger of falling into the hands of traffickers. The Danish National Council for children therefore considers that the number of unaccompanied refugee children embarking on further perilous flight subsequent to their encountering the Danish system should be reduced. One way of doing so would be by incorporating a broader definition of the concept of family member into the Dublin Regulation such that not only parents and guardians are encompassed by the definition.

The Belgium independent institutions pointed out that time span, in which the demand for transfer to another state is being examined, is a period of stress, fear and insecurity for the child. When an unaccompanied minor is being transferred from Belgium to another member state according to the Dublin Regulation, it has not been sufficiently examined whether this transfer is in the minor’s best interest. According the two institutions, the transfer to another member state does not always occur with a clear guarantee about the quality of the reception in that particular country.
Moreover, unaccompanied minors who have to leave their reception center because they have been recognized as being refugees, need further care and assistance. Because of their past as refugees and their uncertain perspectives, specific guidance is needed.

4.4.2 Children in conflict with the law - Detention

“Although our society has difficulties at times accepting the evolving capacity of children in general, it is swift to attribute significant capacity and responsibility to children when they do something wrong, especially when they are in conflict with the law. Children in trouble with the law are regarded as offenders first and children second” said the Irish ombudsperson, Emily Logan.

Over the years, many ombudspersons expressed their profound concerns as their respective governments decided to bring many changes to their respective Juvenile Justice System which would not be compliant with the CRC provisions especially regarding art 40 and 37 and thus have negative impact on the educational and specificity approach of Juvenile Justice System. The following are concerns pertaining to detention/Custody specifically.

A worrying lack of alternative measures to detention

According to several Children’s Ombudspersons, children should never, as a principle, be in custody at all and never be placed together with adults. However, if this still happens, there has to be other alternatives to the existing institutions that are appropriate for children and environments that take the special needs of children into consideration.

Despite this guideline, many ombudspersons have observed that custody is not being used as a last resort. For instance, UK is reported to detain more children than any other country in western Europe and there are growing numbers of children serving longer sentences.

Lack of specific detention facilities for children

In 2008, the Commissioner in Malta brought to the fore the lack of detention facilities for children. Children as young as 13 years old are sent to Corradino Correctional Facility where they are surrounded by adults who are experienced in crime. Some children were sent to Mount Carmel Hospital due to a lack of alternatives, despite the fact that they were not known to be suffering from any mental health problems. The Ombudsperson recommended the creation of a “youth section at Corradino Correctional Facility with a therapeutic residential” and urged that therapeutic residential alternatives be made available to these children while they are detained and awaiting trial, as well as after sentencing.

In his alternative report, the Ombudsperson for children in Norway expressed his high critics to the fact “that children are imprisoned in Norway. The Ministry of Justice has reported that, in 2008, a total of 51 children were remanded in custody, while 24 children were serving a prison sentence. The Ombudsman is concerned over the fact that there seem to be a recent increase in the numbers of imprisoned children. In the Ombudsman’s opinion, the current prison conditions for children are unacceptable and in contravention of the CRC”. “The treatment received by children goes against basic psychological knowledge about the type of follow-up children need. Children are in ordinary prisons together with adults and, to a large extent, subject to the same conditions as adults, a contravention of the CRC, Article 37. It is extremely worrying that children are imprisoned together with adults who are hardened criminals, sometimes in high-security prisons”.

The same statement is made by the ombudspersons of United Kingdom who reported that children can be detained with adults in Northern Ireland and Scotland.

Increasing of close centers and detention places

According to the CRC, detention of a child shall only be used as a measure of last resort and for the shortest appropriate period of time.
In Belgium, the authorities set up a program to create new “closed centers” and thus raise the number of detention places for minors. According to the two independent institutions, the rising number of detention places is a worrying evolution without releasing equivalent means for alternative measures. While the reform of the Youth Protection Law of 2006 aimed to diversify the measures which magistrates could take against minors, with detention remaining the exception, Belgium seems to essentially favor detention.

**Conditions and treatment in detention**

The protection of children in custody remains a fundamental concern as well as their life conditions for many ombudspersons. They pointed out that there is not sufficient external inspection that can supervise the rights of minors and the living conditions in detention. They expressed their deep concerns on many issues in particular about:

- Children being held far away from home and the impact on family visits,
- Limited time out of cells and access to exercise in the fresh air,
- Lack of meaningful vocational education and training,
- Health needs inadequately dealt with although there are high incidences of mental health problems, self-harm and bullying, with a significant proportion of children feeling unsafe,
- The over-use of physical control and restraint, the high levels of intimidation, violence and abuse, not only from other prisoners but also from staff.

The Ombudsperson from Norway expressed his concerns as to physical conditions in prisons which “are most definitely not appropriate for children, and the follow-up they receive is often extremely inadequate. With the exception of a few prisons employing child-welfare professionals, prison personnel are not required to have any specific training in working with young people. Children entering prison form a particularly vulnerable group in need of follow-up from different services, such as child welfare services, health services, schools etc”.

The newly appointed English Commissioner for children has already initiated to create a group of experts with the duty to investigate the issue of mental health and emotional well-being among young offenders. In deed, according to many ombudspersons, these children should receive a fuller access to behavioural and mental health services since they have experienced difficulties and many breaches of their rights during their childhood. Most of them are drawn from the most deprived and disadvantaged families and neighbourhoods. Many have been subject to neglect and abuse, poor parenting and poor educational experiences having a learning difficulty. 85% of children in custody show signs of personality disorder.

The group of experts commissioned by the English commissioner will investigate the issues that impact on these children and young people’s mental and emotional health, and bring these to the attention of Government. Their method will be focused on discussion with to children and young people in the criminal justice system, and the professionals who work with them in order to gather evidence based on their views and experiences. They also will visit custodial establishments, youth offending teams and specialist services to draw on the perspectives of as wide a range of children and young people as possible. They aim to review current policy, research, practice and provision to identify both examples of good practice and any significant gaps and then make reliable recommendations to public authorities.

**Isolation/Solitary Confinement**

According to the Swedish, Norwich and Danish institutions, children can be held in solitary confinement. In Sweden, a survey has shown that this treatment is also used as punishment. From the opinions of the two institutions, all isolation of children and young people in youth detention centres should be completely abolished and forbidden.

The UN Committee recommended to the Swedish Government to review as a matter of priority the current practice of solitary confinement, including amendment of current legislation.

In Sweden, the ombudsperson reported that several changes have been made since:

- “The rules concerning isolation have been sharpened.
- All directors of these centres had a briefing on isolation policy.
- All isolation cases made last year will be examined again.”
- Every decision on isolation will be directly sent from the youth detention centre to the highest director in the region for examination.
- Extra education on legal aspects will be done with external experts.
- The staff is suggested to report all abnormalities”.

**Time spent in detention**

In its comments on a draft proposal in January 2008, the Danish National Council for children informed the Ministry of Justice of its support of the ministerial Criminal Law Committee’s assessment that there is a need for measures aiming at reducing the time children spend remanded in custody. “In 2006, 169 children waited in total an accumulated period of six years following conviction to be transferred from the secure institution to an open unit. Several children waited more than 100 and 200 days”.

The National Council for Children recommend that an absolute threshold should be introduced for time held on remand following conviction, it being neither reasonable nor appropriate that transfer of children to open units be held off while children remain in secured environments.

**The follow up of the Young offenders**

The follow-up of children who commit serious offences requires close cooperation between different agencies. Pilot projects carried out on follow-up teams working with young offenders have yielded good results. This type of measure should be introduced across the country and focus on measures comprising elements of restorative justice and drawing on the network around the young person.

**Voice of the young people**

Following a research, the Irish Ombudsperson pointed out the need to improve the way the views of children and young people in conflict with the law are listened to, heard in decisions making and how children opinions are represented and incorporated into policymaking at all levels. Children in custody have limited access to an independent advocate and any independant complaints mechanisms.

In partnership with the Youth Justice Board, the ombudsperson office for children have commissioned User Voice, an organisation whose work is led and delivered by ex-offenders, to undertake research into the views of young people who currently are or have recently been in custody. They will be asked about their opinions and experiences in relation to safeguarding, to help strengthen and improve policy and practice.

During February and March 2010, User Voice interviewed young people in a range of youth justice settings to find out how complaints in custody are handled, whether a help line should be made available for young people in custody, and the use and effectiveness of full searches, restraint techniques and separation.

A full report of the research findings will be available later this year.

4.4.3 Street Children

Many of street children are children belonging to Roma people and origins and unaccompanied minors.

As mentioned above, in Moldova, street children are one of the children groups for which the Ombudsperson expressed most concern. The Ombudsperson office noticed that no available data does exist on the issue. The Ministry of Internal Affairs suggested data but they are related to children arrested for vagrancy and do not concern the all issue of children living and working in the streets.
4.4.4  Children with disabilities

A large percentage of the complaints received by Ombudspersons across Europe are related to the access to services (education, health, leisure, play, housing, etc) for children with special needs and others breaches of their rights they could daily face. These complaints demonstrate that disabled children, despite the measures taken to better meet their needs and welfare, continue to experience barriers to the full enjoyment of their rights (freedom of expression, rights to give his/her opinion on issues affecting them, having the opportunity to make their own choices). They are also victims of stereotypes and a lack of receptiveness to difference.

Many European countries ratified the UN Convention on the rights of persons with disabilities, dated 13 December 2006, and its optional additional protocol. Each Ombudspersons hope these recent ratifications will ensure a better protection, a better integrated approach to services provisions and a fuller participation for the children with disabilities.

Lack of sufficient and mainstreamed data
The UK ombudspersons reported that the data collected are “most likely an under-representation due to the absence of a coherent method of data collation in each nation. In view of the lack of accurate information, the Commissioners are concerned that the effective planning of services for disabled children cannot take place and that services are not based on need”. This observation has been also made in Sweden. “The Government has not implemented the Committee’s recommendations to collect and categorize statistics on children with disabilities. The data on children and young people with disabilities is still deficient and should be improved”. Ombudspersons recommend that data relating to “disabilities should be collected and disaggregated by type of disability”, “should be gathered on the number of children affected by disability and the nature of the disability”. This will enable the public authorities to plan services and assistance for disabled children and their families more effectively.

Appropriate care and assistance
In many European, public authorities provide assistance including financial to improve children life, inclusion and autonomy. However, the Ombudsperson noticed that many barriers exist in the system such as gaps in service provision, alarmingly long waiting lists, the lack of information about these assistances, and as a result of which minors with a great need of assistance cannot be guaranteed the necessary care.

Numerous files handled by several independent institutions for children rights have to do with the lack of places in regular schools for children with special needs but also in special education settings, institutional day care centers and residences for children with disabilities.

Lack of monitoring of services for children with disabilities
The Irish Ombudsperson expressed deep concern about the lack of appropriate inspection monitoring and complaint mechanisms for children with intellectual disabilities in residential care. She intended to publish an individual case to provide evidence for her concerns about the lack of, monitoring and complaints mechanisms for children with disabilities.

Education
Despite the efforts made by the public authorities to ensure a full access to education to all children including children with disabilities, Ombudspersons continue to highlight the barriers and difficulties encountered by children and their family:

- Special needs education must be improved. In France, for instance, there continues to be a substantial lack of resources available to the specialized sector to assume responsibility for autistic children or children with multiple disabilities and this is forcing people to seek assistance from foreign institutions, notably in the French-speaking part of Belgium (this is currently the case for 3,000 autistic children).”
- Lack of training and appropriate educational facilities for the reception, teaching of children with disabilities in regular schools,
- School assistants who help the children with disabilities in their everyday school life, have precarious statute, they lack sufficient vocational training to assist properly the child.
a large number of the children with disabilities who go to school only do on a part time or even extremely partial basis (3 hours per week).

The agencies mainly at the local level are overwhelmed by administrative tasks and are not provided with sufficient means and resources to provide information to families.

In Belgium, the two institutions also underlined the problem of transportsations: “the school transport for children with disabilities is the object of numerous complaints coming from the parents as well as the schools”. “The duration of the transport (which may take over three 3 hours, twice a day) makes all form of family life impossible and causes a considerable fatigue for children who are already vulnerable due to their disabilities”.

“The experience also shows us that the families hardly have any resort in this kind of situation, since the children rarely possess the necessary capacities to express themselves or to assert their rights. Moreover, although many official associations, advisory bodies and even the independent institutions for children rights have already questioned the authorities on the matter, the system has not yet been sufficiently adapted and the present situation even shows that the problem is getting worse”.

**Protection from all forms of violence**

Disabled children are more likely to be abused than other children. They also suffer from school bullying particularly those with unseen disabilities. There is an increasing need for more awareness of bullying related to disabled children and how to deal with it. In England, guidance for schools on tackling the bullying of children with disabilities and special educational needs has been published in 2008. The Commissioner in Northern Ireland has also produced bullying guidance based on her research involving disabled children.

**Health**

According to the UK Commissioner for children, “access to specialist health care and support is often based on where the child lives or on the ability of the parent or carer to shout the loudest, rather than on the needs of the child. There is evidence of poor co-ordination and problems in funding high quality services”.

“There is a need to give children and young people, commensurate with age and ability, a degree of choice about treatment options. In one study, teenagers with complex health needs wanted to be consulted in this way and to have their views taken into account in decisions, not ignored, as some felt had happened. Many disabled children do not have the opportunity to talk to other young people about their experiences of having a certain condition or indeed of their experiences of disability.”

**Poverty**

Children affected by disability are at greater risk of living in poverty, with a quarter of all children living in poverty having a disabled parent and over half of families with disabled children living in or at the margins of poverty.

The UK alternative report shows that “Access to disability benefits – triggered by an award of Disability Living Allowance (DLA) – improves life chances for disabled children. However, the lack of information about DLA, the onerous nature of claiming and reassessments, and the stigma associated with claiming benefits all have a negative impact on take-up. The Government should simplify the process of applying for benefits and should run a national take-up campaign that addresses lower rates of take-up among, for example, disabled families from minority ethnic groups.”

**Accessibility and Inclusion**

For years, the inclusion of children with disabilities in the every day environment (schools, crèches, youth movements, holiday centers, training, sports or cultural activities) has been the object of numerous complaints handled by the Ombudsperson offices.

“Since Belgium ratified the Convention on the Rights of Persons with Disabilities, the country is forced to make headway with the problem, which is all the more necessary because the present situation is much worse than what it might rightfully expect. Eventually, initiatives are being taken and are multiplied all over the country, but those still greatly depend on the goodwill of
some people responsible, who have often been sensitized themselves on a personal level. This state of affairs cannot go on, and the integration of all children with disabilities in all environments should henceforth receive a legal basis, including the adequate training of all professionals concerned”. The existence of a new decree of the French Community (February 5th 2009) aims at integrating children with disabilities into regular education. According to the Ombudsperson, Bernard de Voos, “it is still premature to assess the possible positive impact of the decree, but its text has already been the target of a lot of criticism, coming from the regular as well as the special schools. This state of affairs emphasizes the urgency of a widespread sensitization to the problem that occurs not only in the childhood years, but also in all forms of initial and continuous professional training”.

The Scottish Ombudsperson issued a report “Moving and Handling Children and Young People with Disabilities” laid before Scottish Parliament highlighting issues for children and young people with disabilities in terms of moving and handling. This has resulted in further research commissioned to Glasgow Caledonian University with recommendations on the design and purchase of suitable equipment. Another publication was commissioned providing a moving insight of a young woman with disabilities struggling to progress in her university education.

The Office of the Parliamentary Commissioner for Civil Rights of Hungary launched in 2009 a project about the rights of people living with disabilities, called “With dignity-with difference”. The project aimed to direct public attention to persons who are living with any kind of disabilities. By cooperating with different stakeholders such as civil organizations, local authorities, ministries, Parliament committees, the Commissioner initiated a dialogue among the various parties aiming at an active networking. All efforts have been put in place to mainstream the public discussions about the rights of persons with disabilities, to promote the necessary paradigm change and to ensure that their best interests are taken into account at least as much as those of the other children. The outcome of the project consists in the organization of two workshops on the rights of people with disabilities, in the public and private life, and a final conference on people living with disabilities in institutions.

Children voice and participation
The UK Ombudsperson noted in their common alternative report that “Disabled children and young people are much less likely than those without disabilities to participate at any level, particularly those with complex needs or with only non-verbal communication. Research has shown only a small number of disabled children are involved in decisions about their care. Many professionals lack understanding, hold assumptions and/or underestimate disabled children’s competence and ability to participate.” “Despite new statutory duties on public authorities to promote positive attitudes towards disabled persons and to encourage participation by disabled persons in public life, there is limited evidence of the impact of these duties on the lives of disabled people. Moreover, the duties have yet to be implemented by a number of authorities.”

Another important issue highlighted by the different Ombudsperson offices is related to the access to speech and language therapy services which is not necessarily dependent on need, but on geographical variations in service availability, particularly for assessment and intervention. “Assistance for disabled children to realize their right to express their views is not always available. Children with communication difficulties, including those with non-verbal communication, should have a statutory right to communication support and be provided with appropriate communication aids to ensure they can participate. In addition, there is a need to invest in communication aids and in training and support for families and health and social care staff to enable them to competently use high and low tech communication aids. There is also a need for disability equality training for professionals.”
4.5 Recommendation: Strengthen the focus on others groups of children

Others groups of children not mentioned in the background paper are also at greater risks to become invisible from public scrutiny and protection afforded by authorities. Many ENOC members in their diverse activities have highlighted situations, conditions of life that deserve more attention from public authorities in terms of protection of their whole fundamental rights but also a better receptiveness from society.

4.5.1 Children living in poverty

Many ombudspersons are really concerned by the living condition of families and children living in poverty and the impact this situation could have on children and their rights. According to them, there is an urgent need to invest in research on the extent and the impact of poverty on children, and more specifically from their perspective. Certain issues are relevant:

- The housing situation remains a major cause for concern for the most vulnerable families.
- Growing up in poverty harms the possibilities of a decent education (and hence a better future) for children.
- Poverty also strongly affects the children’s right to family life.
- Poverty also has a considerable impact on children’s health.
- Access to leisure activities and the right to free circulation are equally endangered for children from poor families.
- Transport costs are often a major problem for those families, even the transport to school.

The Ombudsperson for the French Community, Belgium published an important report on the issue and makes many recommendations.

In Catalonia, the Deputy for the children rights informed ENOC members during the ENOC Annual Conference that a study on Poverty and Children in Catalonia is in process.

4.5.2 Children whose parents are in prison

In Norway, “it is estimated that in any one year there are between 6000 and 9000 children with one parent in prison. There is however no systematic means of collecting data on how many children fall into this category and the kinds of challenges they face. More research and information is needed on these children and their needs”.

The Ombudsman for Children of Norway has set up a consultative group bringing together children that have faced the situation of having a parent in prison. The group has directly proceeded on the ground to an evaluation of the way children are being received and to the support of the relationship with the parent in the central prison of Oslo. Following this evaluation, the group met with the prison authorities and had an exchange on their observations and proposals.

In 2008, the Scottish institution published the report, “Not Seen. Not Heard. Not Guilty. The Rights and Status of the Children of Prisoners in Scotland”. This report argues that the children of prisoners are the invisible victims of crime and of the penal system. It examines the laws, policies and practices that are significant for these children and makes recommendations that aim to promote respect for their rights. In particular, the rights of children to family life and to have their best interests taken into account in all decisions affecting them are highlighted.

Many ombudspersons for children raised this issue and lay it before the Committee on the rights of the child in their alternative report. For instance, the Danish Council reported that “between 4,000 and 7,000 children in Denmark whose mother or father is serving a prison sentence. 3% of all children have at some time during childhood experienced a parent being sentenced to imprisonment. This is a traumatic experience for these children. They react in the same way as
children who have lost a parent due to illness or accident, yet they are by no means certain of receiving help in coping with their grief”.

“The National Council for Children is aware that certain improvements, for example concerning visiting conditions, have been made in recent years for children with imprisoned parents. However, not all children of imprisoned parents receive help, and there is a continued need for greater knowledge in the area as well as for a coherent set of initiatives targeting these children.”

The Council called for greater responsibility assumed by society to help the children of imprisoned persons. “One way of doing so, as already seen in Sweden, is by appointing a children’s representative among staff at each of the country’s prisons” with a proper training and is accorded responsibility for ensuring a high standard of visiting conditions for the children of inmates. “Moreover, the Council considers that it should be obligatory to ask any person under arrest whether they have children, and subsequently to contact the family with regard to providing support to such children. At the same time, conditions for children’s visits to prisons must be improved. Half an hour a week is inadequate for a child suffering due to the absence of a parent. More time would make it easier to maintain family bonds, to the benefit of inmate and child alike. One interesting initiative in this respect is the Danish Prison and Probation Service’s “family house”, Pension Engelsborg, where focus is placed on resocialisation by means of family therapy for both inmates and their families. Implementation of the family therapy initiative commenced in June 2005, and an assessment of the project’s first three years shows positive results”.

4.5.3 Traveler Children

In its alternative report, the French ombudsperson expressed concern about travelers’ children, who generally have French nationality. The children’s ombudsperson noted that, in spite of the recommendations of the National Consultative Committee for Travelers’ and the efforts made by certain «départements» and municipalities, these populations far too often encounter serious problems in terms of their children’s education and the fact that they live in highly precarious housing conditions and are often expelled by authorities.

This situation is also true in Ireland where traveler children endure multiple breaches of their rights, particularly in the areas of poverty, access to education, health and leisure. To date, numerous policies and other interventions have failed to fully address the underlying causes of these problems.

According Emily Logan, the Irish Ombudsperson for children “redoubling of efforts is required to address the underlying causes of the serious barriers causing these problems. The Ombudspersons for Children are well placed to highlight efforts to address the rights of Traveller children and to monitor progress in this area from a rights perspective. It is particularly important that measures are taken to involve the traveler community as full partners in the process and to ensure that the voices of traveler children are also taken into account”.

4.5.4 Children belonging to a minority or an indigenous group

4.5.4.1 Children belonging to a indigenous group

A Nordic initiative including Finland and Norway was focused on the rights and the welfare of Sami Children. The aim of this initiative was to compare the situation between the two countries and emerge the main challenges as well as best practices. The Finnish Ombudsperson issued a report in 2008 related to the Welfare of Sami Children and the Realization of their Rights. The office collected Sami children and young people opinions and recommendations concerning matters affecting them. Children had the opportunity to explain what they expect from local and national decision makers. Their parents and the adults who work with and for them were also interviewed.
The main issue raised in the report is related to educational language. Even if the right of Sami children to their own language is guaranteed by law, Sami children are in a very unequal position with respect to Sami language learning and learning in Sami. Some young people receive two hours of Sami language instruction a week via the internet, while others can learn practically all their subjects in Sami.

The lack of continuity in Sami language instruction is seen to be a problem. This is due to such things as the lack of qualified teachers using Sami language. The lack of Sami language teaching materials is also seen to be a problem. The discussions held in class and in the small groups revealed that Sami children are hardly taught the history of their people.

Children belonging to a minority are paid due attention by the Ombudsperson of Croatia who last year a large number of statements/opinions including on children belonging to national minorities.

4.5.4.2 Children from Roma communities

In numerous European countries, Roma people and children face many breaches including discrimination as to the access and full implementation of their rights.

In Moldova, the Ombudsperson for children highlighted that many Roma communities where children rights are not respected. In one of them access to educational system is not ensured, access to basic services too. Financial resources given for educational system for children from other ethnic groups is much greater than for Roma children.

In Slovakia, the office of the Ombudsperson for children informed that the critical situation of Roma children living in settlements in geographically hard-reached areas or areas out of housing infrastructures with no road, water supply, electricity network, etc.

The French Ombudsperson also reported on the situation of Roma children in France. She then stated that:

- They live in highly precarious situations and are often expelled by the police,
- Although the majority of families want their children to get an education, their education is often disrupted and certain municipalities even refuse to grant them access to schooling, even though this is compulsory (from 6 to 16 years of age),
- There is often a complete lack of social and educational support from the child social assistance services, except for the emergency provision of housing or food.

On the basis of a study involving Roma children in Finland, the Ombudsperson for Children called for greater visibility of Roma culture in schools and the media and thus recommended that all children in schools should be better informed about the Roma culture in order to combat prejudice. Work against school bullying should pay special attention to Roma children, because of the widespread problems of name-calling and derogatory labeling they face. In deed, the Roma children interviewed have experienced more bullying at school than children on average in Finland. However, their positive assets include having broad social networks and many hobbies. They also find that they have been able to retain their Roma culture. However the possibilities to learn Roma language at school are very uneven. The main conclusion of the study is that more information about the Roma culture needs to be distributed among the majority population.

4.5.5 Immigrant children

In February 2010, the English Commissioner for children published a follow up report entitled “The arrest and detention of children subject to immigration control”. This second report was based on visits held in Yarl’s Wood Immigration Removal Centre in Bedfordshire by the Commissioner. According to him, each year some two thousand children are detained for administrative purposes for immigration control. In his first report published in May 2009, he
already expressed his profound concern over the treatment and management of children in that location and required that the administrative detention of children for immigration control end. Being pragmatic and recognizing that the process was unlikely to end immediately, he called upon Government to ensure that detention genuinely occurs only as a last resort and for the shortest possible time following the application of a fair, transparent decision-making process.
During his last visit in October 2009, organized to examine the impact of his first report in addressing the concerns raised regarding children’s experience, he pointed out that many changes occurred in the center. He made detailed new recommendations relating to many highly unsatisfactory aspects of the process of arrest, detention and enforced removal of children and their families.
He once again recall upon public authorities that detention is harmful to children, has a profound and negative impact on children and young people and therefore never likely to be in their best interests.

In Belgium, in early October 2008 the Minister for Migration and Asylum Policy decided to no longer detain families. At this precise moment, their deportation happens via return houses. At present, there are nine of those return houses in Zulte and Tubize and four more available by the end of 2009. Just like the Council of Europe’s Commissioner for Human Rights, the Belgium institution for children welcomed the minister’s efforts to avoid detaining children in closed centers, but they deplore that children are still being locked up when they arrive at borders and do not get access to the territory.

4.6 MAJOR RISKS

4.6.1 Children trafficking

As mentioned above, on March 2009, the Welsh Commissioner published a study realized by ECPAT as to the extent of child trafficking in Wales, the level of awareness of child trafficking among social services, others local authorities and associations, the method and tools used to deal with cases of child trafficking.
At first, the study underlines the lack of baseline data, information on children who have been trafficked into, within and out of Wales.
Many other issues emerged such as;

- The difficulties to determine the existence of a child. Many children are being kept hidden even when “the rest of the family is known to statutory and voluntary services”. The lack of information as to the child enters in UK for instance is a big cause of concern.
- The difficulty to identify a child as a potential victim of trafficking: “A recurring theme throughout the study was the difficulty practitioners have in identifying whether or not a child has been trafficked. In our view, this stems from three interlinked areas: attitudes, knowledge and practice, on both personal and organizational levels.”
- The lack of private fostering assessments even after child identification. The study highlights that many children remain living with unknown adults. No systematic assessment is conducted about the carer and its situation. This increases the risks to these children.
- The incidences of children going missing: “The link between trafficking and children from abroad going missing from care has been well established”
- The lack of data collection on how and why these children arrived in Wales.”

Then, the study focuses on several recommendations:
- On practice level:
  - The importance of training for all professionals on child trafficking and separated children in general on how to recognize and respond effectively to the needs of the child who may be victim of trafficking. “It is important to accept that these things can happen”, and “to challenge the culture of disbelief”. A report published by Save the Children Wales in 2006 includes the need for an all-Wales group on trafficking, as well as specialist training on “cultural issues and child trafficking”.
On Policy issue:

- The need to ensure the implementation the current domestic and international provisions in the field,
- “To co-ordinate a public awareness-raising campaign, community events and conferences on trafficking,
- To ensure that communities are given information on child trafficking and what to do about it
- To ensure safe placements for child victims of trafficking following on from the positive developments for a specialist refuge for adult victims of trafficking
- To consider how the therapeutic needs of separated and trafficked children can be met”.

A same attention as to child trafficking was also paid by the Lithuanian Ombudsperson for children who participated in May 2008 in OSCE conference “Child trafficking: responses and challenges at local level”. She urged to intensify the struggle against child trafficking as well as child involvement into prostitution. During a meeting with OSCE Special Representative for combating trafficking in human beings, the Ombudsman presented two main streams in early prevention of trafficking in human beings (children whose parents went to work abroad; children in institutions and special schools) and suggested to involve these topics into OSCE agenda. During the ENOC Annual Conference, she informed her colleagues that involvement of early prevention (especially for the most vulnerable groups of children) into OSCE agenda could be one of the priorities of Lithuania in 2011 when it will be charring OSCE.

The Ombudsperson provided the UN Committee on the rights for the child with comments on the Lithuanian report on Optional Protocol on child trafficking, child prostitution and child pornography.

Fundamentally, the Ombudsperson expressed comments and made recommendations about:

- the European Commission proposals regarding the Framework Decision on Combating sexual violence against children, sexual exploitation and child pornography and the Framework Decision on trafficking in human beings for the prevention, combat and protection of victims,
- the strengthening of child protection from sexual exploitation and sexual abuse in Lithuania,
- the project of continuous national program Prevention and control of trafficking in human beings for 2009-2011,
- the improvement of knowledge of special schools teachers’ (specialists’) in the field of sexual abuse.
4.7 European Union Involvement

A European strategy is necessary to support the Member States in their efforts to ensure the fullest possible implementation for each child living under their jurisdiction. In this order, European Union could focus its energy in:

- **ENCOURAGING MEMBER STATES TO BUILD UP NATIONAL CHILD RIGHTS STRATEGIES**
  
  Member States should be encouraged to build up national children strategies and their action plans. This type of strategy should be carried out with multidimensional, disciplinary approaches aiming to identify the groups of children who could be qualified as vulnerable, invisible children, and then build up coherent and multifaceted responses needed to address the complex multiple barriers faced by these children. This strategy should also focus on integrating children’s voices into the all process including decision making at local and national levels.

  Member States should focus on these two priorities:

  o **Collecting data**
    
    The connection between the lack of data and the lack of awareness about children’s rights issues in particular those children who remain vulnerable is clear. Lack of data leads to the absence of an evidence base and harms a child-focus policy and practice in many areas. In this regard, serious problems as highlighted by the Ombudspersons for children currently exist with the lack of data on unaccompanied children, trafficking, children in the care and youth justice systems and other vulnerable children and research is urgently required.
    
    As mentioned above, these data collection should be coordinated by a unique and centralized agency which should provide a harmonized system among all entities collecting data and based on multidisciplinary approaches and a disaggregated method in order to cover all areas of the CRC.

  o **Developing law, policies and practices in accordance with CRC provisions**
    
    Inadequacy of law, policy and thus practices remain a main barrier, obstacle to the full protection and realization of children’s rights. Member States should be encouraged and supported to incorporate CRC provisions in all the domestic legislation. Member States should be encouraged to undertake assessment of their legislation which have an impact on children needs, welfare and rights and then bring relevant remedies without delay.
    
    European Union could also stimulate them to identify the main gaps as to practices in particular services provision, training, information and thus encourage all actors who work with and for children to develop practices and procedures designed to promote the rights and welfare of children and keep in reviewing them.
    
    European Union and its Member States could lean on the Ombudsperson for children on each step of this process.

- **PEER REVIEW AND MUTUAL LEARNING**
  
  European Union could collect all relevant policies and practices affecting vulnerable children and drawn up by the Member States and provide an expert analysis leading to peer review and mutual learning.

- **ELABORATE AND PROMOTOTE GUIDELINES**
  
  Considering adequate policies with regards to children rights as set out in the CRC and best practices collected throughout Europe, European Union could mainstream guidelines as reference tools to ensure a fullest protection and realisation of the rights of the child in particular for children recognized as invisible.