“Millions of children are victims of violence and exploitation. They are physically and emotionally vulnerable and they can be scarred for life by mental or emotional abuse. That is why children should always have the first claim on our attention and resources. They must be at the heart of our thinking on challenges we are addressing on a daily basis. We know what to do, and we know how to do it. The means are at hand, it is up to us to seize the opportunity and build a world that is fit for children.”

Ban Ki-moon, Secretary-General of the United Nations

PREFACE

Firstly, I would like to thank the team of experts of “Hope For Children” UNCRC Policy Centre for preparing this significant policy paper on the rights of the child in Europe which will highly contribute to meeting the institutions’ goals on a European level.

I personally greatly appreciate the EU’s efforts aimed at the global promotion of the rights of children. Children have been and will be the future of mankind. I, as the General Director of the institution therefore strive to ensure that this statement has tangible content so that we can look to a future that holds promise.

Children have a very special place in our society because of their vulnerability and their special needs for protection. We are acutely aware of what children must be protected from, including negligence and abuse. However, realizing a world in which every child reaches his/her full potential, requires more than ensuring their physical protection. It requires concrete actions to ensure that we live up to our obligation to safeguard the respect for every child’s fundamental human rights.

Too often we fail in our responsibilities towards vulnerable children and young people in Europe. Let us continue the efforts for the world envisaged by Save the Children: a world in which all children have a healthy and safe childhood, the opportunity to learn and a voice to speak for themselves. And let us continue to urge our governments to fulfill their obligations to respect, promote and protect the rights of all children.

Joseph Varughese
Director-General
“Hope for Children” UNCRC Policy Center
20th November 2012
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1. Introduction

With the recent undertaking of the Presidency of the Council of the European Union by the Republic of Cyprus, it is crucial, as an independent Cyprus-based institution founded on the values and principles that endorse children’s rights, aiming, in particular, to promote respect and protect this set of rights, to evaluate this event from a human rights-based perspective and particularly, to examine the possibilities available for the EU to improve and further enhance the local, national, European and international status quo regarding children’s rights.

Our organisation HFC “Hope for Children” UNCRC Policy Centre supports initiatives that take into account rights-based approaches to international cooperation, with added emphasis on vulnerable groups such as children and the youth. During the last few years we have witnessed troubling phenomena taking place in various national fora, such as the fall of democracy, the censorship of expression, the collapse of financial systems and the deepening of economic recession, as well as an increasing sense of nationalism and xenophobia spreading across Europe. The wide-ranging effects of these phenomena have accentuated long-standing problems of violence and abuse, which have a disproportionate impact on the youth populations living in or outside the EU, due to the intersection of economic, political and social problems. These impacts have been identified by civil societies, NGOs, States and by multilateral institutions at a local, regional, national, European and international level. The question arising from this is, how can we guarantee a solution that “meets the needs of the present without compromising the ability of future generations to meet their own needs”, echoing the ever so pertinent Brundtland Commission’s statement from 1987?

We strongly believe that there is potential for advancing children’s rights with sustainable and long-lasting outcomes that will be beneficial for governments as well as the societies in general. However, it is only with the practical willingness of policy-
makers and stakeholders that any vision of change can become a reality. The Presidency of the EU by the Republic of Cyprus is a great opportunity to raise some crucial points which may be used as indicators for progress in the area of children’s rights. We urge EU Member States and institutional bodies to recognise significant obstacles to the realisation of children’s rights and to undertake actions aiming to develop a system that respects difference and enhances sustainability, equality, equity, participation and accountability.

2. Violence Against Children

There are no EU Member States where all children are free from fear or abuse. Violence against minors can take many forms, including, but not limited to, organized crime, human trafficking, as well as ‘hidden’ forms of violence, such as domestic abuse or abuse in ‘believed’ secure environments, such as schools. Regardless of what kind of abuse takes place, it is always harmful for a child; it is certainly, inter alia, detrimental to their well-being and may have a huge impact on their future. Thus, it needs to be stressed that violence against children constitutes a grave violation of human rights. Under the international human rights framework, and the United Nations Convention on the Rights of the Child, children are entitled to state protection against violence and abuse, even negligent treatment by parents, guardians etc. (Article 19).

Violence against children is a challenge for the European Union and special measures must be put in place so that maximum policy coherence is achieved and children will thus be able to freely benefit from their rights wherever they are situated within Europe. The incidence of violence against minors can certainly improve, and the European Union Parliament must play a key role in supporting children’s rights and counteracting child abuse. The proper allocation of financial resources, an effective and holistic legislative framework at a European level, as well as awareness-raising
campaigns among Member States are actions which can ameliorate the life of children and enhance international obligations on more efficient promotion and protection of the rights of the child. Any measure however, should take into account first and foremost the children’s best interests, as espoused by International Conventions and European Union law.

2.1. Sexual abuse and exploitation

Data indicates that an estimated 10%-20% of children in Europe have experienced sexual abuse. However, “differences in national definitions of different child sexual abuse and exploitation offences, very significant under-reporting by victims, and inadequate data collection mechanisms”¹ undermine the reliability of statistics. Child sexual abuse, also a priority area for the Stockholm Programme, may occur within the family, peer groups, manifest as grooming, pornography, sale or prostitution. Trafficking for sexual purposes, or forced prostitution, is one of the most serious forms of sexual abuse since it often involves vulnerable youth populations, deprives children not only of the right to healthy psycho-social development and freedom from degrading treatment but in cases the right to liberty. Trafficked children, moreover, lack access to appropriate services and support, for example education or health care. The European Union, recognising the importance of counteracting human trafficking, must make efforts to maintain a common legal framework regulating issues such as protection, support of victims, rehabilitation, criminalisation and penalties. The Directives 2011/92/EU and 2011/36/EU of the European Parliament and the Council are steps towards addressing the multitude of forms of sexual exploitation and abuse of children, such as the online solicitation of children (2011/92/EU) and trafficking (2011/36/EU), which must be ensured to have direct effect in Member States.

RECOMMENDATIONS:

- Need to ensure that national legislative systems criminalising sexual abuse perpetrated against children are consistent with the approach undertaken by the EU, and that such legislation is in effect and practiced.
- Increased policy coherence is vital to further European harmonisation and cooperation between Member States, tackle EU issues such as offences committed outside the EU’s jurisdiction and provide speedy and accessible recourse as remedy for victims etc.
- Common European prevention initiatives for detection and handling of sexual abuse. Member States must introduce, maintain and strengthen sexual education amongst children and youth, provide rehabilitation and support services for victims and perpetrators (such as State-funded rehabilitation centres), as well as training to educators, families and the media, to encourage reporting of offences and adopting child-sensitive approaches.

2.2. Violence in schools

An alarmingly sharp increase in violence perpetrated in school environments has been observed and a number of Member States undertook actions aiming to reduce the problem. It is obvious that the role of schools to educate and perform as places for positive character-building cannot be maintained if bullying, peer violence, violence towards or from teachers, or discriminatory attitudes take place. There is no EU legal or policy framework regarding violence in schools and there are no special international treaties on violence related to the school environment; however three articles of the UNCRC are relevant (Art.19(1), Art.28(2) and Art.29), especially Art.19(1) which places the responsibility on State parties to ensure that children will also be protected in the school environment. As the Committee on the Rights of the Child states in General Comment No. 1 (2001), “children do not lose their human rights by virtue of passing
through the school gates”. Cyprus, alongside other European countries, is rapidly becoming a centre of cultural diversity in all areas of life, including schools and places of study. Therefore it is crucial for schools and teachers to act as role models, preventing and condemning acts of violence occurring on school grounds and opposing violence practiced anywhere, whilst undertaking steps to foster a spirit of acceptance, non-violence, cooperation and diversity. Although it might be that schools alone do not have sufficient resources or capacity to counteract violence, a European top-down approach will ensure downstream results nationally and locally.

RECOMMENDATIONS:

- Initiate and fund European educational programs to develop the acceptance of difference and cooperation among students and educational staff, as well as the provision of training and capacity-building – those might be crucial steps of prevention and intervention.
- A European-guided framework for policies and a legally binding document that will lead to National Action Plans should be adopted to address the phenomenon of bullying and instances of violence occurring in schools, or even online.
- The development of teacher and student support networks as steps towards providing assistance and counseling to victims of in-school or peer violence and to those responsible for addressing and preventing it.

2.3. Corporal Punishment

In almost all European countries corporal punishment, or colloquially ‘smacking’ (domestic, school or judicial) has become illegal. The Committee on the Rights of the Child commenting on Art.19(1) of CRC in General Comment No.8 (2006), which makes
no explicit reference to corporal punishment, stressed that there is an "obligation of all States parties to move quickly to prohibit and eliminate all corporal punishment"\(^2\). Nevertheless, in many European countries corporal punishment is perceived as socially acceptable and sometimes condoned, allegedly being in the ‘best interests’ of the child. Corporal punishment, however minimal, is as harmful for a child as any other form of violence and may have long-term detrimental effects on a child’s well-being. Furthermore, corporal punishment teaches children that violence is a suitable method for conflict resolution and societal barriers to combat this form of violence still remain, e.g. little media coverage on corporal punishment in comparison to other forms of abuse.

**RECOMMENDATIONS:**

- Changes in legislation and new policies to ensure implementation and guidance for those working with children and families. Corporal punishment and all other harmful and humiliating forms of discipline for children should come within the definitions of domestic or family violence and the proposed in-school violence.

- European-wide awareness raising campaigns, media campaigns and educational programmes to inform the public about children's rights, including the prohibition of all corporal punishment and other inhuman or degrading treatment of children.

- Monitoring existing levels of corporal punishment and progress in reduction, as well as of the contexts in which it occurs, should be used to ensure that appropriate measures are undertaken in individual European countries.

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\(^2\) UN Committee on the Rights of the Child (2006) “General Comment No. 8:” par. 3.
3. Children on the Move

One of the priorities of the EU is the establishment of a Common European Asylum System (CEAS) and the strengthening of cooperation between Member States in reception conditions, asylum procedures and standards for qualification as refugees or as persons under international protection. There is much discrepancy between EU Member States on asylum rules and minimum European standards will remain fragile without the existence of a coherent policy framework.

We urge governments and stakeholders, including European Asylum bodies, to focus on the most vulnerable group of migrants and asylum seekers – children. Millions of children migrate, some of them accompanied by their parents, others without. Migrating children are exposed to substantial dangers and inadequate living standards, which the European Union must account for.

3.1. Unaccompanied minors

Member States have already recognised in the Stockholm Programme that the special protection of unaccompanied children is required in areas such as minor smuggling, family tracing and identification. The absence of a common legal framework regulating issues like age assessment or guardianship hinders the progress of protection and as a result, procedures may infringe fundamental rights as guaranteed by the CRC and other international human rights documents, like the United Nations High Commissioner for Refugees (UNHCR) Guidelines on the reception of asylum seekers. It has also been observed that the procedures by which minors are identified, assessed and their asylum applications are examined are in their nature bureaucratic which can cause undue distress to minors. Additionally, a minor might reach adulthood before their application is examined from which the possibility of deportation arises. Such important issues should not be undermined because of lengthy procedural matters, following the legal
maxim ‘justice delayed is justice denied’. There is grave concern for cases of unaccompanied minors where potential trafficking and exploitation for sexual (for which girls are at a higher risk) or economic reasons is not uncommon. Unaccompanied minors need special attention and added protection in order to avoid legitimate and present threats. Finally, where there is a claim for asylum from persecution, the particular rationales leading to such persecution in the country of origin should be prominently kept in mind when examining the deportation or return of the individual in question.

RECOMMENDATIONS:

• A legally binding document should be adopted setting out minimum core standards based on the recommendations of the Separated Children in Europe Programme (SCEP) and the UNHCR Conventions and Guidelines. It is essential to ensure national laws’ compatibility with European regulations and that a monitoring body is appointed where there are none, in order to guarantee that unaccompanied children’s rights are respected in a timely and effective manner.

• A comprehensive response at Union level should combine prevention, protection and assisted return measures while taking into account the best interests of the child throughout, in line with the action plan proposed by the European Commission in the Stockholm Programme. The EU should also facilitate greater family re-unification within the EU for unaccompanied migrant children.

• A minimum time barometer should be considered when reviewing applications in assessing the feasibility of establishing a joint processing of asylum applications in the EU.
3.2. Detention of migrant minors

According to European law, a minor’s detention should be used only as a last resort for the shortest appropriate period of time (also found in Art.37 CRC). However, this is a general prohibition that might not be in accordance with national legislation. Routine detention of children is widespread in European Union Member States and while there is a recommendation for minors not to be detained, when ‘irregular’ or ‘undocumented’ (used instead of ‘illegal’, in light of the criminal - and not administrative - connotations that an ‘illegal’ offence carries) migrant minors enter a territory they are more likely to be detained. Unaccompanied migrant children may encounter a triple vulnerability in regards detention; being migrants, being children and because they are often without documentation. First and foremost it must be reinforced that in such cases the best interests of the child are the primary consideration and, according to international law norms and standards, children’s liberty should not be deprived. The EU should represent a haven of child-friendly justice systems both through its internal and external policies.

RECOMMENDATIONS:

• The EU should declare and enforce stricter guidelines prohibiting the detention of children, including the reform of Dublin II Regulation to incorporate this issue in a common European asylum policy.
• A definitive Europe-wide approach dealing with children, whose asylum applications are under review, is required to refrain from detention and deprivation of basic human rights as guaranteed by international standards. National laws should also guarantee basic needs and rights of children pending the age assessment procedure.
4. Economic Exploitation and Child Labour

Article 32 of the CRC, namely the right of the child to be protected from economic exploitation and from performing hazardous work or work that interferes with their rights, has to be fully implemented by Member States since all European countries are State Parties to the Convention. At an EU level, Art.32 of the EU Charter of Fundamental Rights explicitly prohibits child labour and is set out to protect young people at work, following Directive 94/33/EC.

Although provisions combating child labour exist, the EU’s commitment to protecting children from this form of exploitation is short, referring mainly to the EU’s external action\(^3\). The EU should not solely focus on lobbying partner countries for ratification of instruments against child economic exploitation and on providing technical assistance. The relationships between individual (including legal persons) or State responsibility, and child labour have not been identified and therefore any resultant legislation which might work to deter multinational corporations and States from exploiting human resources is currently absent. As international supply chains get bigger in a constantly globalising world, it is imperative that a mechanism is introduced which can ensure the implementation of the principles against child labour at a national and EU level; principles that are presently violated indirectly because of the absence of direct causations and legislation based upon it.

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\(^3\) See for example “A Special Place For Children in EU External Action”, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, COM 2008
RECOMMENDATIONS:

- A legally enforceable document should be adopted which will bear upon national development strategies of the Member States. EU measures for the observance of International Conventions (mainly ILO Conventions and its Global Action Plan with the aim of eliminating the worst forms of child labour by 2016 through national development and policy framework) against child labour must be taken to break the circle of exploitation nationally, e.g. by commitments to fair trade.
- The EU needs to have greater scrutiny over labour market policies that encourage deregulation, in order to recognise unfair practices of private bodies and hold accountable those in violation of international human rights standards and EU regulations.
- There must be a shift towards a gradual EU-oriented policy on trade and development cooperation and a review of existing policies, such as Free Trade Agreements (FTAs), in order for them to become beneficial to children and youth worldwide.

5. Children in Armed Conflict

It is estimated that around 300 000 children⁴ are actively involved in armed conflicts as child soldiers or otherwise. Many of them are recruited by force and against international and national law, such as the 2000 Optional Protocol to the UN Convention on the Rights of the Child concerning the involvement of children in armed conflict. Child soldiers may be directly engaged in hostilities as fighters, spies or used as human shields but they also can be used to perform domestic duties or, not exclusively but predominantly in cases of girls, often as sexual slaves. Regardless of the role children

⁴ EU Guidelines on Children and Armed Conflict, p.1
play in conflicts, often being coerced to engage in hostilities, it is harmful to their physical and mental development, as well as to their physical integrity. Although important steps have been taken by the international community to combat children’s recruitment and involvement in armed conflict, progress in this area is still slow.

RECOMMENDATIONS:

• Need to assure multilateral cooperation and intensify political dialogue with countries and non-state actors, by asserting pressure on the countries which have not prohibited the recruitment of children into armed forces. The aim should be to render illegal any form of child engagement in armed conflicts, whether direct and or indirect (e.g. by transmitting information).

• Efforts to update the international and European legal framework for the absolute prohibition of the involvement of all children (under 18 years old) in armed conflicts are desperately necessary. Such a framework must take into account post-conflict issues and the transitional justice needs of children, e.g. family reunification and psycho-social rehabilitation. Therefore there is a requirement for the commitment of States to take all necessary (and not only effective, as listed in the UNCRC Second OP) measures to both end this practice and remove all impunities for those committing crimes against children.

6. Child and Youth Participation in Decision-Making

In pursuance of Article 12 CRC children have the right to express their views freely and to have their opinions taken into account in decisions affecting them. Thus, children should be involved in decision making processes and their opinions should be heard.
This, in turn, facilitates their right to development, which encapsulates *inter alia* the right to education, leisure and play. Safety standards for playgrounds, public spaces and facilities are an example of the creation of child-friendly environments, which contribute towards children developing to their full potentials. Equally, by accommodating children’s and youth’s access to participation, we familiarise them with democratic processes and amplify a sense of citizenship and global responsibility. If children are involved in the formation of local policies, there is an increased likelihood that respective actions will reciprocate children’s needs. The European Union should ensure that youth have roles, as agents for positive change, in decision-making and implementation processes that determine their own future. A positive step has been marked with the adoption of the third Optional Protocol to the UNCRC on a Communications Procedure in December 2011. The new Protocol creates a legal framework for submitting complaints to the Committee on the Rights of the Child directly by children. It gives children and their representatives the possibility to report rights violations, therefore enabling and empowering children to claim and fully realise their rights.

**RECOMMENDATIONS:**

- Need for instruments and tools to incorporate youth and child participation in formal structures, in all settings. Youth councils, student councils, special consultations for local, national and European agendas, and child focus group meetings should be promoted, but not limited to.
- The EU should adopt an action plan or youth strategy in decentralised cooperation with national municipalities in supporting youth-led initiatives in the areas of education and culture, for direct local impact.
- The EU must urge Member States to sign, as soon as possible, the third Optional Protocol to the Convention on the Rights of the Child and take steps for ratification and
implementation into their national legal systems, in order to take immediate effect after the 10th ratification.

7. Economic Backlash and Poverty

Underprivileged children living in unfavourable conditions certainly cannot fully exercise their rights. Unfortunately, European countries are far from free of child poverty and minors living in European Union countries continue to face a lack of basic resources. Even the most developed countries such as Great Britain, Ireland or Italy have child poverty levels as high as 15%. Poverty undermines the quality of life of children, inducing malnourishment, lack of education, poor health and living conditions that can ultimately lead to their death. In the South, intensive agriculture methods, the escalated production and use of biofuels (represented in the food vs. fuel argument), systematic deforestation and land degradation affects the living standards of the world’s poor, amongst them, and of increased vulnerability, children. In the North, global monitoring bodies document steep increases in youth unemployment (25.3% according to Eurostat), in psycho-social problems affecting children as a result of financial problems encountered in family contexts, in child abuse cases, and in the lack of opportunities for young generations.

Alarmingly, measures taken in European countries to overturn the State’s economic collapse, apart from having negative and disproportionate impacts on the poorest and on youth populations (including high youth unemployment rates, public service cuts, and rises in tuition fees), are, at best, ephemeral and do not provide long-term macroeconomic solutions, and, at worst, increase the detrimental effects to wellbeing faced by younger people. Expansionary fiscal policies need to be reviewed against
contractionary policies in order to find stable routes out of the present recession and in order to prevent self-defeating actions. It is also vital that the EU adopts development strategies that take into account non-financial indicators of progress as proposed by the UNDP. The EU needs to reassert that human rights cannot be sacrificed at the altar of financial rejuvenation.

RECOMMENDATIONS:

- The EU should seek to improve the living conditions of children in developing countries through beneficial country-owned aid policies, for example by the removal of strict economic and financial policy conditions on States for macroeconomic adjustment.
- Need for EU Member States to encourage Member State cooperation with CSOs in combating child poverty’s root causes and engagement in constructive dialogue, and to perform consultations regarding the adoption of economic measures to assess holistically their adverse impact in areas that the CSOs work.
- The EU must ensure that rights are accessible and available for the full enjoyment of all children. For example, primary education should be totally free with no “hidden” costs, and that special attention should be given to migrant children with the provision of language courses.
8. Conclusion

European Union policy making bodies must seek to identify gaps in legislation or legal procedures, inefficiencies and shortcomings in their practical application and the impediments they pose for children and youth to realise their rights. Attention should be paid to certain, aforementioned, sections of the youth population; unemployed, living in poverty, asylum seekers, unaccompanied minors, street children, exploited (sexually and/or economically) and abused children (physically, psychologically and/or sexually), and victims of violence etc. Efforts must ensure the gradual and smooth (re)integration of such groups into society. Gender-based violence is widespread and harmful practices, predominantly against girls, such as female genital mutilation (FGM), forced marriage, honour-related violence, incest, politically induced rape as a weapon of war/torture, in conjunction with the aforementioned sexual violence practices, should be tackled and reduced dramatically. Any policy, decision proposed or implemented must be driven by the overarching principle of non-discrimination and all unfair treatment of children or young persons, on the grounds of a protected characteristic or solely on the basis of age must be denoted as a violation of international human rights law commitments.

As an independent institution, we strongly assert that children and youth should be a chief consideration for the agenda of the Cyprus Presidency of the EU and for those of forthcoming Presidencies, in order to ensure a prosperous future for the Union and its citizens. We must see fundamental rights, such as access to safe water, food, shelter, health and sanitation, education and leisure, freedom from degrading treatment and abuse, as the starting point of any discussion. Moreover, meeting basic needs with open access and affordably whilst engaging in dialogues for sustainable solutions, must be considered within the fields of trade, investment and aid. Development efforts should aim at improving the living standards of populations, especially youth and children, without economic growth working as an impediment. Finally, the background of each individual should be respected and accepted without erosion under labels of ‘European
citizen’, ‘refugee’, or any other. We hope that, during the Cyprus EU Presidency and in the long-term, a social context can be generated, in which the principles of inviolable human rights, multiculturalism and fair globalisation are acknowledged, understood and pursued with vigor.