

Dynamo International • Defence for Children International – Belgium  
With the support of the European Commission – PROGRESS Programme

# DEFENDING CHILDREN'S RIGHTS IN EUROPE

[ A Practical Guide ]

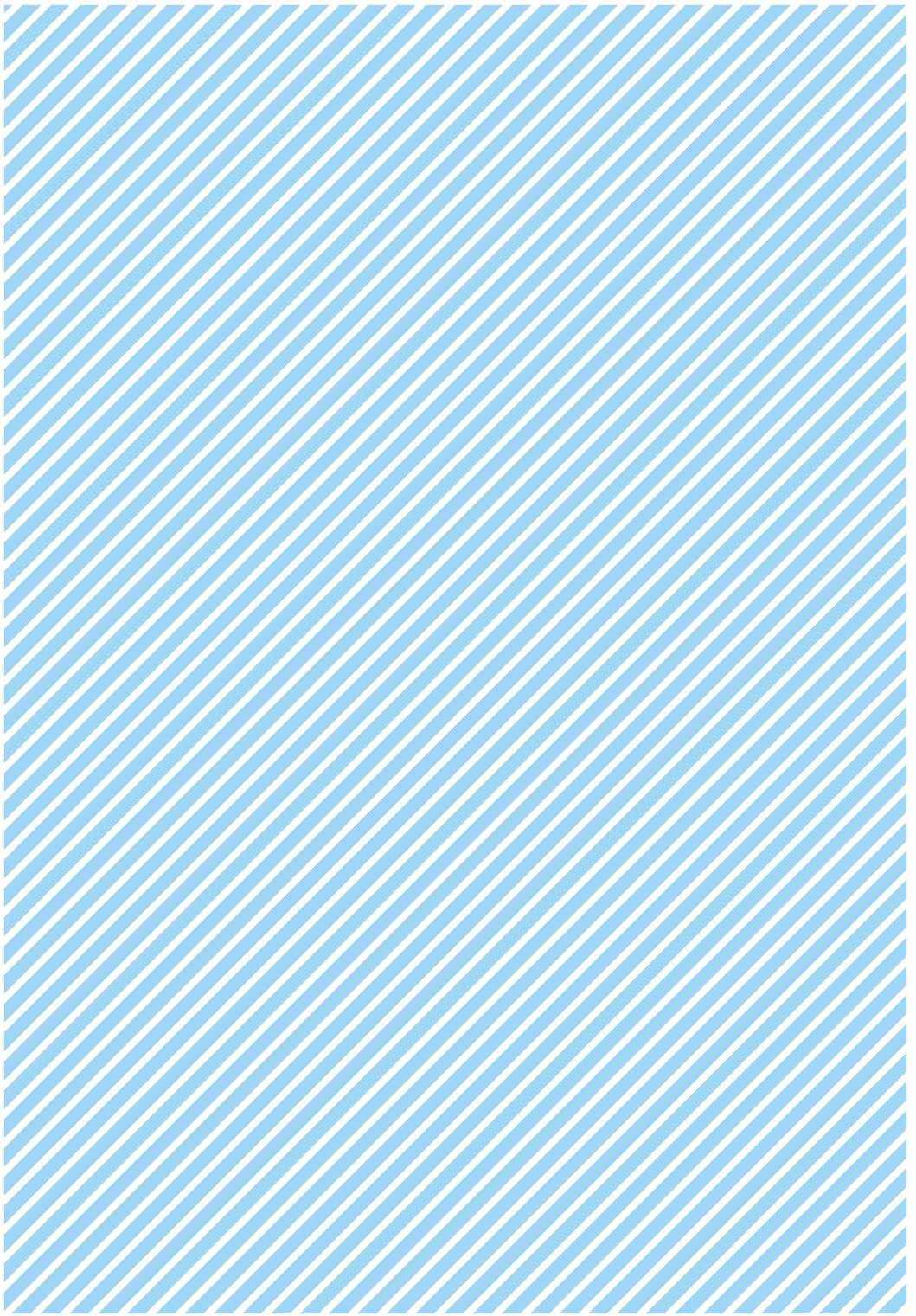
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# DEFENDING **CHILDREN'S RIGHTS** IN EUROPE

[ A Practical Guide ]

#1



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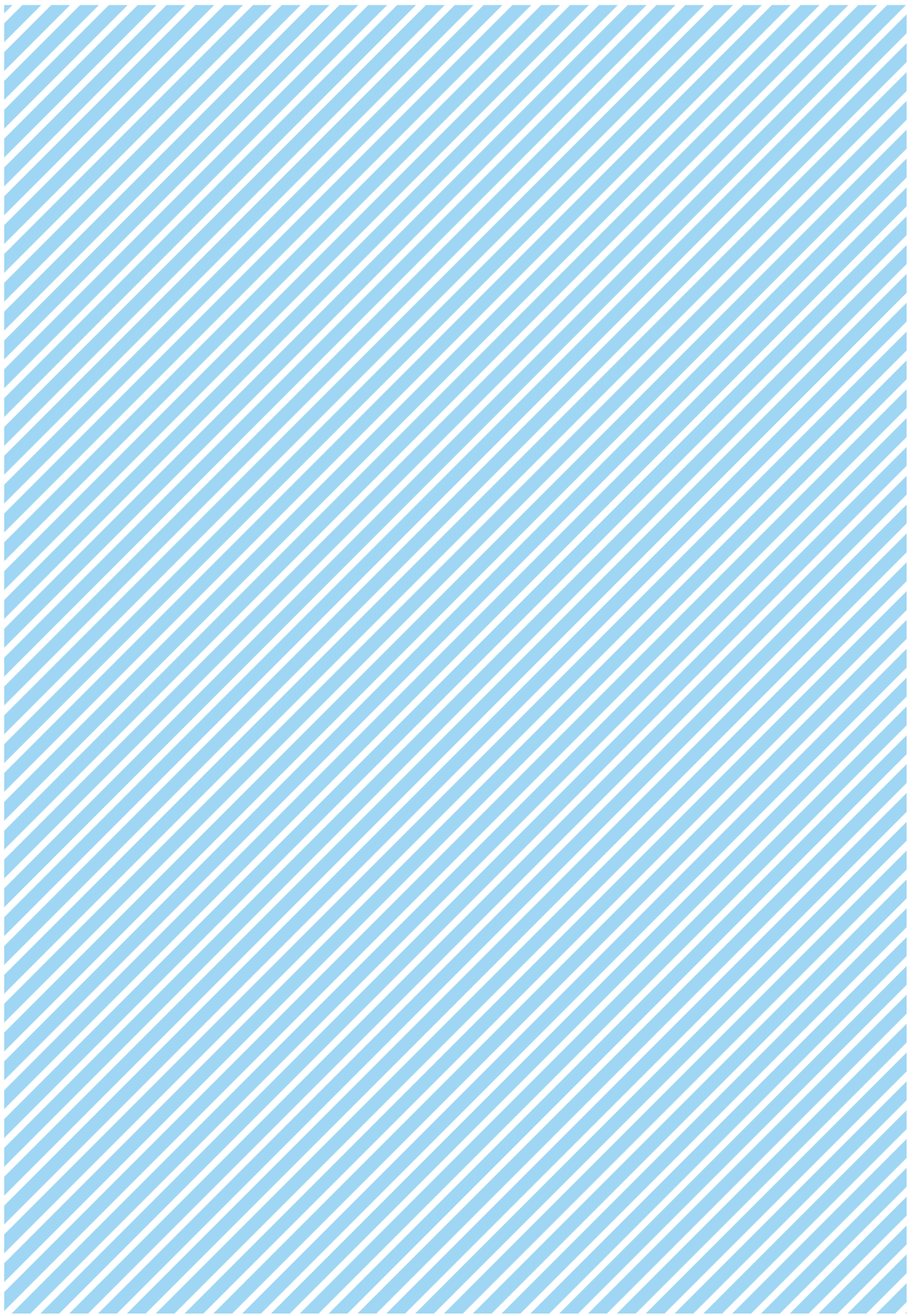
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*The information contained in this publication does not necessarily reflect the position or opinion of the European Commission.*



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<b>Introduction</b>	<b>08</b>
<b>Presentation of the associations</b>	<b>12</b>
<b>01* The applicable international texts</b>	<b>16</b>
01*A. General human rights texts	18
01*A.1. Universal texts	18
01*A.2. Regional texts	19
01*B. Specific texts on children's rights	22
<b>02* The fundamental principles governing children's rights</b>	<b>24</b>
02*A. Protection	25
02*B. Best interest of the child	26
02*C. Participation of the child	27
02*D. Non-discrimination	28
<b>03* Some specific rights</b>	<b>30</b>
03*A. Children and identity	31
03*B. Children and family crisis	32
03*C. Children and education	36
03*D. Children and health	38
03*E. Children and housing	41
03*F. Children and discrimination	43
03*G. Children and migration	45
03*H. Children and exploitation	47
03*H.1. Human traffickings	48
03*H.2. Economic exploitation of children (child labour)	49
03*H.3. Begging	51
03*H.4. Sexual exploitation of children	53
03*I. Solutions for children who have infringed the law	55
03*I.1. The applicable legal texts in juvenile justice	56
03*I.2. Setting up a a child-friendly system	59
03*I.3. Prevention of juvenile delinquency	60
03*I.4. Alternatives to the judicial system	61
03*I.5. Children and the trial	62
03*I.5.a. Arrest of a child	62
03*I.5.b. Guarantee of a fair trial	62
03*I.5.c. Criminal responsibility	63
03*I.5.d. Deprivation of liberty	64



<b>04* The international mechanisms available, in case of violations of children’s rights</b>	<b>66</b>
04*A. General international mechanisms	67
04*A.1. Reports	69
04*A.2. Communications issued by States	72
04*A.3. Communications issued by individuals	72
04*A.4. Inspections	72
04*A.5. Inquiries	73
04*A.6. Early-warning measures and urgent procedures	73
04*A.7. Special procedures	74
04*A.8. The Universal Periodic Review (UPR)	74
04*A.9. The International Criminal Court (ICC)	75
04*B. Regional monitoring mechanisms	75
04*B.1. The European Court of Justice (ECJ)	75
04*B.2. The European Court of Human Rights (ECHR)	75
04*B.3. The European Committee for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment	76
04*B.4. The Council of Europe Commissioner for Human Rights	77
04*C. National Mechanisms	78
04*C.1. The children’s Ombudsman	78
04*C.2. Other national mechanisms	80

<b>05* How to use these mechanisms</b>	<b>82</b>
First reflex: information	83
Second reflex: reaction	84
Third reflex: legal intermediaries	85
Fourth reflex: political and parliamentary intermediaries	86
Fifth reflex: alliances	87
Sixth reflex: the press	87
Seventh reflex: documenting situations	88
Eighth reflex: using the international organisations	89
Ninth reflex: involving young people	90

**Defending Children's Rights  
in Europe**

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A Practical Guide

**[INTRO-  
DUCTION]**

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President  
*of Defence  
for Children  
International-  
Belgium*

**Edwin  
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Director  
*of Dynamo  
International*

The *International Convention on the Rights of the Child* is now over 20 years old and there are other instruments defending children's fundamental rights which are older still. In recent years, instruments aiming to promote better respect for children's rights have proliferated, to the extent that it is now difficult to follow everything.

Most texts (conventions, covenants, recommendations, guidelines, minimum standards and so on), establish a mechanism for implementation and monitoring which is intended to ensure that the principles enshrined in them become effective.

But!

But on a daily basis, the rights of many children go completely unrecognised, including (and above all?) by those who are supposed to implement them and the beneficiaries themselves: the children. Not only unrecognised, but worse, deliberately violated on a massive scale.

This is a serious accusation and we are well of that. Nonetheless it corresponds to the daily lives of far too many children.

Alongside particularly grave events, which are sometimes very clumsily portrayed in the media, there are swathes of daily violations of rights which are not generally visible.

Social workers, and street workers in particular, are the privileged witnesses of this situation (but is it in fact a privilege?) Every day, they meet children forced to live in the street, who do not even have the bare minimum; they live in insalubrious or overcrowded housing and they suffer from social and police violence (despite the fact that the first duty of the police is to protect society).

There is very little social assistance for people in these circumstances, and thus they are often disregarded by the people whose job it is to drum up both individual and collective responses.

Many children live in unacceptable situations, without even understanding that their rights are not being respected. Ignorance of rights on the part of those who should be able to demand their full and complete implementation is also a major obstacle to the application of international standards.

Now, while street workers are in direct contact with the reality on the ground, working according to social work methodology and ethics, they tend to have a poor understanding of the mechanisms that are in place to react to violations of children's rights and, a fortiori, are not able to use them for the children's benefit. Nonetheless, one of their most important missions is to identify problems and denounce rights violations.

On the one hand then, we have the witnesses of children's rights violations, who are often poorly equipped to deal with the situations they face and on the other, the Committees, experts, procedures and courts, which do not have a broad enough view of the whole picture and the specific situation in which they should be intervening. There is a link missing in the chain.

This guide aims to bridge that gap.

It aims to help street workers (and more generally social workers and other key actors in contact with children) to understand the existing mechanisms and to know in which case which mechanism can be activated, and how to go about it.

In this way, the international bodies can be informed of the excessive number of situations of which they are unaware, and can endeavour to provide specific and effective solutions.

This is why this guide begins by recalling the most relevant international standards and treaties and explaining their content. It sets out the main rights, of which all children are holders, and the principles on which the international standards are based. It also includes examples of practices linked to street work.

It then goes on to present the various types of mechanisms aimed at ensuring rights are applied. These are many and varied: committees mandated to examine national reports, committees of experts carrying out field visits, individual complaint mechanisms, questioning States, inquiries, special representatives, and more.

Lastly, this guide explains specifically how social workers who are directly aware of intolerable situations can activate these mechanisms, transmit the cases to national bodies and individuals but also to the international bodies, and ensure that effective responses are being provided, thereby enabling a change of the situation on the ground.

Of course, this will not come about overnight but it is our duty to work for it tirelessly. It is a commitment which must become a reality. Better respect for children's rights will ensue as a result and we fully intend to contribute to this.

**Benoit Van Keirsbilck**

President of *Defence for Children International - Belgium*

**Edwin de Boevé**

Director of *Dynamo International*

**Defending Children's Rights  
in Europe**

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A Practical Guide

# [PRESENTATION OF THE ASSOCIATIONS]

**Dynamo  
International**

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www.  
travail-de-rue.net

**Defence  
for Children –  
International  
(DEI)**

-----  
www.  
dei-belgique.be

www.  
defenceforchildren  
.org

## PRESENTATION OF THE ASSOCIATIONS

## Dynamo International

*Dynamo International* was created in 2001, following in the footsteps of over 25 years of work by the *Dynamo AMO* outreach association, supporting children and young people in street situations. *Dynamo International* was born out of the observation that street workers across the world often face similar situations, asking themselves much the same questions. It appeared essential to create an organisation bringing together platforms of street workers from different countries in order to exchange knowledge, practices and experiences.

*Dynamo International* currently coordinates the *International Network of Social Street Workers* which encompasses national and local platforms representing 42 countries, from the north and south alike. The Network thus reaches thousands of workers across the world, who work in the street on a daily basis, with particularly vulnerable people who spend part of their day in the street, either working or living there. The Network aims to be a place where street workers can come together to learn about each other's situations on the ground and share their experiences, approaches and methodologies, etc. One of the major events organised by *Dynamo International* was the *Second International Forum of Social Street Workers 'Words from the Street'* in October 2010, which brought together no less than 700 participants from across the world.

From 2011 to 2013, *Dynamo International* is benefiting from an agreement under the *PROGRESS* Programme, the *European Commission's* Programme for Employment and Social Solidarity. This provides funding for meetings of coordinators of the network's various member platforms, for publications which are useful for workers, and training, among other things. **'Defending Children's Rights in Europe: A Practical Guide'** falls under this umbrella as it was financed by *PROGRESS*. Moreover, under the agreement, *Dynamo International* is recognised as a European network involved in the fight against poverty.

Collaboration with an NGO like *Defence for Children – International*, which has extensive experience in the area and with which *Dynamo International* has been working for many years, gives street workers elements which will strengthen their activity on the ground and their advocacy work, by combining theoretical approaches with practical examples.

[www.travail-de-rue.net](http://www.travail-de-rue.net)

## Defence for Children – International (DCI)

*DCI-International* is an international movement defending human rights, which is dedicated to the promotion and defence of children's rights. It urges States to effectively implement public policies guaranteeing children's rights and the enjoyment thereof, in societies where justice for all children should prevail.

On the international level, *DEI-International*<sup>(O1)</sup> is an INGO (International Non-Governmental Organisation), created in 1979 in Geneva during the International Year of the Child. The goal of the association is to ensure continued, systematic and concerted international action, to promote awareness of and to protect children's rights. It has consultative status with the United Nations *Economic and Social Council* (ECOSOC), with *UNICEF* and the *Council of Europe*, and boasts national sections in over 40 countries. On the international level, DCI was a key player in lobbying for the United Nations' adoption of the *International Convention on the Rights of the Child* (CRC). In

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(O1) [www.dci-is.org](http://www.dci-is.org)



recent years, DCI has decided to focus on juvenile justice as the main theme for the movement internationally. However, the DEI movement still attaches great importance to children's other needs and problems such as violence against children, economic exploitation, children's participation, child rights education, professional training, etc.

*DCI-Belgium* was created on 10 September 1991. The association aims to support the Movement's work and in particular to promote, protect and defend children's rights in all areas, especially those featuring in international declarations and instruments. It also aims to ensure that children benefit from the best possible level of protection and defence; to foster a climate of solidarity among peoples, in particular by raising awareness among children living in Belgium of what children elsewhere experience, and among organisations working for children and for respect of their rights; and lastly to defend the interests of children who are, or who may become victims of violations of these rights, mainly in Belgium.

To this end, *DCI-Belgium* undertakes research activities, studies, meetings and training sessions in collaboration with various bodies with similar objectives (extracts from the goals mentioned in the association's statutes). While the association mainly works in Belgium, it is developing many partnerships and exchanges at the international level.

[www.dei-belgique.be](http://www.dei-belgique.be)  
[www.defenceforchildren.org](http://www.defenceforchildren.org)

## **Acknowledgements:**

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We would also like to thank Olivier Pourbaix for his careful and meticulous proofreading.

# [THE APPLI- CABLE INTER- NATIO- NAL TEXTS]

# 01

01\*A. [P. 18]

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**General human  
rights texts**

01\*B. [P. 22]

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**Specific texts  
on children's  
rights**

There are very many international standards in the field of children's rights. They cover various aspects (child victims, torture, labour, education, etc.). The texts and conventions discussed in this chapter are those which are particularly worthy of attention.

Some international instruments are binding. This means that States which have signed and ratified them must respect and incorporate them into their national legislation (if the law contradicts the treaty, the State Party must amend its national law). Moreover, if a citizen believes that their rights are not being respected, they may invoke an international treaty before a judge; the treaty will prevail over the national law. In cases where States fail to respect the commitments made under the treaties that they have ratified, mechanisms are put in place not only to help States Parties conform to their obligations, but also to reprimand them if necessary.

Other texts, (such as declarations or recommendations,) issued by international bodies like the United Nations or the Council of Europe, do not possess this binding force. These are the so-called non-binding texts, and they are primarily an invitation to States to apply the content of these texts, which means that States must take into account the principles enshrined therein when putting in place their policy on children.

In terms of content, there are two types of texts: general human rights texts and specific texts on children's rights.

## 01\*A. General human rights texts

### 01\*A.I. Universal texts

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The *Universal Declaration of Human Rights (UDHR)* is a non-binding text which was adopted in 1948 by the *United Nations General Assembly*. It sets out rights at the international level but has no real legal value. It is recognised as the foundation behind international human rights law which inspired the majority of binding international texts. It recognises that all human beings are born free and equal, and that fundamental rights and freedoms are inherent and inalienable. Thus there can be no discrimination due to colour, race, religion, ethnicity or language.

Signatory States to the declaration have therefore committed to upholding dignity and justice for all.

The *International Covenant on Civil and Political Rights (1966)*, adopted by the *United Nations General Assembly*, recognises rights which are quite close to those enshrined in the *European Convention for the Protection of Human Rights and Fundamental Freedoms*. These rights are ensured for all individuals within the territory of a State Party to the Covenant. Examples include the right to life, the prohibition of cruel, inhuman or degrading treatment or punishment, the right to be treated with humanity and dignity in cases of deprivation of liberty, the right to be informed of the reasons at the time of arrest, the right to a name, the right to freely associate with others, the right to State protection given children's status as minors, etc.

The Covenant establishes a Committee which may receive written communications from individuals, who claim to be victim of a violation of rights enshrined in the text. The Committee can only make observations and may not impose financial sanctions on States.

The *International Covenant on Social, Economic and Cultural Rights (1966)*, adopted by the *United Nations General Assembly*, sets out a series of rights which States undertake to apply without discrimination. Thus the Covenant applies to people of all ages, including children. It also sets out rights relating to work (right to work, right to just and favourable conditions of work), rights relating to the family and society (right

to maintain family relations, right to an adequate standard of living, right to enjoy the highest attainable standard of health) and rights relating to culture (right to education, freedom of choice of school).

It is generally accepted that few of the provisions in the Covenant may be invoked by individuals before national courts. It is up to signatory States to implement the principles enshrined therein, and to refrain from adopting legal provisions which would contravene the covenant.

### 01\*A.2. Regional texts

DO NOT CONFUSE the *European Union and the Council of Europe*.

**The European Union (EU)** is an international organisation, which aims to create an increasingly close union among citizens and to ensure economic and social progress through joint action. The interests and objectives of this organisation were originally economic. But concern for human rights in Europe has been gradually incorporated.

It currently has 27 Member States. It is based on treaties (the most recently ratified being the Lisbon Treaty of 1 December 2009), which organise the division of competences between the Union and the Member States. In certain fields (commercial, monetary), the EU is the only body able to act as States have delegated their competences, while in other areas they share competences. Finally, in some fields (research, public health etc.), States retain their competences and the EU supports their actions.

The EU possesses its own institutions:

- The *European Commission*, which upholds EU interests;
- The *European Parliament*, which represents European citizens;
- The *European Council*, which brings together Heads of State and government of the 27 Member States;
- The *Council of the European Union*, which represents the interests of Member States;
- The *European Court of Justice*, which monitors the application of European rules.

EU law prevails over the national laws of Member States. It may be invoked before national courts and before the *European Court of Justice* in specific appeals, subject to certain conditions.

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*The Council of Europe* is another international organisation, headquartered in Strasbourg. 47 States are part of it today. Its scope, in terms of both geography and competences, is therefore much broader than that of the European Union. It was founded in 1949 with the aim of promoting and defending human rights and democracy, of developing European cultural identity in the post-Second World War context; a conflict which the founders wanted to prevent from re-occurring in Europe. The Council of Europe is organised around the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the application of which is monitored by the European Court of Human Rights. It encompasses several other important institutions in terms of fundamental rights, such as the Committee of Social Rights (which ensures application of the European Social Charter, the Committee for the Prevention of Torture and the Commissioner for Human Rights).

Its main goals are to:

- Protect human rights, pluralist democracy and the rule of law;
- Promote awareness and encourage the development of Europe's cultural identity and diversity;
- Find common solutions to the challenges facing European society;
- Consolidate democratic stability in Europe by backing political, legislative and constitutional reform.

It also has its own institutions, such as the *Parliamentary Assembly*, the *Committee of Ministers*, the *Congress of Local and Regional Authorities*, and the *Conference of INGOs* (International NGOS), etc.

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*The European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)* is one of the main European human rights texts. While it does contain rights that are applicable to adults, it also proclaims important rights for children; the right to a family life, the right to a fair trial, the right to education, prohibition of inhuman or degrading treatment, among others.

The *European Court of Human Rights* monitors its application by States. Individuals may turn to it after they have exhausted all domestic legal mechanisms without success.

The *European Social Charter* is a treaty concluded under the aegis of the *Council of Europe* which lists the rights and freedoms that are of a social nature; the right to housing, health, education, employment, legal and social protection and non-discrimination. Given that it applies to all human beings, it automatically applies to children. A State which signs the Charter undertakes to respect at least six of the nine articles of the 'core' of the Charter<sup>(01)</sup> and to choose an additional number of articles or paragraphs which they will be bound by. All States Parties are therefore not bound by the same provisions.

The *European Committee of Social Rights* (ECSR) ensures that States respect the Charter. It cannot be contacted by individuals but by NGOs with participatory status at the *Council of Europe* or by the *European Trade Union Confederation (ETUC)*, etc.

The *Charter of Fundamental Rights of the European Union* was adopted in December 2007 and, since the entry into force of the *Lisbon Treaty* (2009), has enjoyed the same binding force as the founding treaties of the *European Union*. Thus it is monitored by the *European Court of Justice*.

This is a text which brings together all the civil, political, economic and social rights featuring in various international instruments and which European citizens, including children, may enjoy. They are grouped under different themes; dignity, liberty, equality, solidarity, citizenship and justice. The Charter has a specific article on children's rights<sup>(02)</sup> which mentions the right to such protection and care as is necessary for their well-being, the right to maintain contact with their parents, unless that is contrary to his or her interests, but also principles such as freedom of expression and how their best interests must be a primary consideration in all actions relating to children.

(01) These articles of the 'core' of the Charter are: Articles 1 (the right to work), 5 (the right to organise), 6 (the right to bargain collectively), 7 (the right of children and young persons to protection), 12 (the right to social security), 13 (the right to social and medical assistance), 16 (the right of the family to social, legal and economic protection), 19 (the right of migrant workers and their families to protection and assistance) and 20 (the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex).

(02) Article 24 of the *Charter of Fundamental Rights*.

## 01\*B. Specific texts on children's rights

The *International Convention on the Rights of the Child (CRC)* is the flagship standard in this area. This is a full list of the rights which children should enjoy and which States have committed to respecting in their legislation and in their administrative or legal decisions affecting children. It sets out civil rights (the right to a name, nationality, family, etc), political rights (access to information for the child in accordance with their age and maturity, freedom of thought, religion and assembly, etc.), cultural and social rights (the right to leisure, education, the highest attainable standard of health, right to special supervision for adopted or fostered children, etc.), economic rights (right to an adequate standard of living, right not to be forced to work, etc). This list is not exhaustive and only mentions some of the rights protected by the Convention.

In proclaiming these rights, the *CRC* meets three objectives:

- Reaffirms the rights already enshrined in other treaties;
- Takes into account the vulnerability of children by making other rights more flexible or more strict;
- Drafts norms that are specific to children.

The two optional protocols annexed to the *CRC* should also be mentioned, as they aim to strengthen rights in specific areas:

- the Protocol on the involvement of children in armed conflict;
- the Protocol on the sale of children, child prostitution and child pornography.

The *CRC* and its two protocols are monitored by the *Committee on the Rights of the Child*.

The *Council of Europe programme "Building a Europe for and with children"*: Launched in 2007 by the *Council of Europe*, it aims to safeguard respect for children's rights in all European countries. It includes two sections which are closely linked: the promotion of children's rights and the protection of children from violence. Indeed, given that children are more vulnerable than adults, measures must be taken to protect them.

The programme strives to eradicate all forms of violence, by focusing on awareness-raising, education, training and prevention. It also aims to help States put in place the necessary strategies and structures to consolidate children's rights.



The above-mentioned texts are considered to be the most important. There are others focusing on specific areas (torture, juvenile justice, rights of child victims or witnesses). In terms of juvenile justice, we could cite the *United Nations Standard Minimum Rules for the Administration of Juvenile Justice* (Beijing Rules - 1985), the *Riyadh Guidelines for the Prevention of Juvenile Delinquency* (1990), the *United Nations Rules for the Protection of Juveniles Deprived of their Liberty* (Havana – 1990), and the *Council of Europe recommendations*, which are set out in more detail later on.

[THE FUN-  
DAMEN-  
TAL  
PRIN-  
CIPLES  
GOVER-  
NING  
CHIL-  
DREN'S  
RIGHTS]

02

02\*A. [P. 25]

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**Protection**

02\*B. [P. 26]

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**Best interest  
of the child**

02\*C. [P. 27]

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**Participation  
of the child**

02\*D. [P. 28]

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**Non-  
discrimination**

Children's rights do include specific rights and freedoms, but they are covered more generally by several over-arching principles. These principles also reflect the very concept of children's rights and their *raison d'être*.

## 02\*A. Protection

The very idea that children can have rights is actually a fairly recent one, as it only appeared in Europe towards the end of the 19th century (with the first French laws regulating child labour and compulsory education), before real concrete expression in the 20th century, culminating in the adoption of the *International Convention on the Rights of the Child (CRC)* by the United Nations on 20 November 1989. Children constitute a particularly vulnerable category in any society, as they do not have the experience and physical or mental maturity to ensure that their rights are protected themselves. Protection is therefore essential, to ensure their personal fulfilment as well as the promotion of their interests, rights and freedoms. For instance, the principle of protection lies at the root of rights regarding health, justice, education and so on.

One of the first rights which must be upheld under the principle of protection is that of the child's right to life, survival and development. The right to life is clearly one of the most fundamental, as without it there could be no protection or effectiveness of other rights and freedoms. It is recognised in very many international human rights texts as well as those specific to children<sup>(01)</sup>. The child's right to survival and development often falls under the same provision as the right to life<sup>(02)</sup> and is evidence of the need to ensure that children have access to basics such as food, water, adequate care, housing or leisure. All children must be able to develop their gifts and potential, in all situations, whatever part of the world they live in. While the child's right to survival would appear to be a given in certain parts of the world, particularly in Europe (apparently!) this is far from being the case everywhere. Some progress has been made under the *Millennium Development Goals*<sup>(03)</sup> but there is still much to be done. With no guarantee of these essential needs, we cannot talk of dignity or a way out of poverty.

The parents or legal representatives of children (such as guardians) are the main people responsible for the protection of their children or those in their care. They are guides in the exercise by the child of their rights<sup>(04)</sup>. Their authority is legitimate only in this sense; as soon as they do a child harm, they are no longer 'credible' in their role and the State must then step in, through child protection social services. If they need to, parents must be able to request assistance from the State authorities.

## 02\*B. Best interest of the child

The *CRC*<sup>(05)</sup> establishes a fundamental rule of children's rights, linked to protection: the best interests of the child must guide all actions, initiatives, decisions or policies concerning them. This principle of prevalence over all other interests which may come into play (for example: the interests of parents, third parties, public interest, etc.) is

(01) Article 2 of the *ECHR*, Article 6 of the *CRC*, Article 6 of the *International Covenant on Civil and Political Rights*, Principle n° 2 of the *Declaration of the Rights of the Child of 1959*.

(02) Example: Article 6 of the *CRC*.

(03) These are eight key goals adopted by the United Nations in 2000; they aim to reduce child mortality, reduce extreme poverty and hunger, ensure primary education for all, promote gender equality, improve maternal health, combat AIDS, assure sustainable development and develop a global partnership for development.

(04) Articles 5 and 18 of the *CRC*.

(05) Article 3 of the *CRC*.

echoed in Article 24 of the *Charter of Fundamental Rights of the European Union*. This is not a stand-alone concept and therefore it supports the other provisions of the Convention. It is a general formulation, not tied to a specific situation, and therefore applicable to all fields and decisions, of a very diverse nature (child labour, prohibition of corporal punishment, family environment, juvenile justice, migration etc.) Any authority (for example judges or police officers) taking a decision which will affect a child must therefore bear this rule in mind and ensure it prevails in each situation. All bodies in a State must apply the principle of the best interests of the child without flagrant divergence.

The *European Court of Human Rights* obliges Member States of the Council of Europe, to generally take into account the best interests of the child "*in all decisions concerning them*". In its view, this interest must "*always be interpreted consistently, whatever the international convention invoked*". The 'best interests of the child' has become a recurring reference in Court decisions in cases involving children.

## 02\*C. Participation of the child

It is undoubtedly under this principle that children's rights take on their full importance. In fact, while the first national and international texts on children's rights focused mainly on their right to be protected in various aspects and situations, the establishment of participatory rights proves that these children are not only human beings to be defended, but that they can be social actors and citizens, capable of having their own critical view of the world around them. Indeed, as they grow up, children (every human being below the age of 18 years<sup>(06)</sup>) acquire a certain level of maturity and their own capacity for reflection. This is why all recognised "intellectual" freedoms of mankind in general (freedom of thought, conscience, information, expression, association and assembly)<sup>(07)</sup> apply to children or, more specifically, to children with judgment and capacities of understanding. Thus, improvement in the situation of street children and better respect for their rights must by definition come from their participation.

(06) Article 1 of the *CRC*.

(07) Articles 9, 10 and 11 of the *ECHR*.

The *CRC* clearly recognises the right of the child to be heard in any proceedings affecting them. This right is set out in more detail later on, under specific rights on family crises. But beyond this procedural view of the child's participation, initiatives have been developed in order to involve children in the social and political life of their country. Thus in France, the Children's Parliament was created in 1994 to allow pupils in the last year of primary school to be part of the democratic system. Every year, over 500 children meet and vote solemnly on the three legislative bills which they judge to be the best. The bill with the most votes is normally taken up by a Member of Parliament who tables it in the National Assembly. Bills ensuing from the Children's Parliament have been incorporated into French legislation, in particular the opportunity for orphan children to take part in the board of guardians made up of family members or strengthening the role of schools in the prevention and detection of ill-treatment of children.

This participation is essential as when their opinions are sought-after and listened to by adults, children feel more involved with the situation in their country and global events. They become aware of their rights and their role in building society. They become more responsible and gain confidence, particularly when they are heard by local, national and even international authorities.

## 02\*D. Non-discrimination

The principle of non-discrimination against children entails them being treated equally in similar situations. In particular, the following grounds cannot be cause for differential treatment of children<sup>(08)</sup>: race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, or other status<sup>(09)</sup>. This

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(08) Article 24 of the *International Covenant on civil and political rights*, Article 2 of the *UDHR*, article 14 of the *ECHR*, article 2 of the *CRC*

(09) Article 15 of the *European Social Charter*, Article 23 of the *CRC*, *Recommendation (1185) of 1992 of the Council of Europe on rehabilitation policies for the disabled*, *European Parliament Resolution on the Human Rights of Disabled People*, in the framework of its *Recommendation 1938 (2010) "Guaranteeing the right to education for children with illnesses or disabilities"*.

The *Committee on economic, social and cultural rights*, in its General Comment n° 5 on persons with disabilities, sets out state obligations to eliminate discrimination against the disabled, noting in particular the right to take part in cultural life.

principle deeply affects children in street situations, as they are often stigmatised and considered to be undesirable. Their path to social reintegration is paved with real obstacles.

# [SOME SPECI- FIC RIGHTS]

# 03

03\*A. [P. 31]

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**Children  
and identity**

03\*B. [P. 32]

---

**Children  
and family  
crisis**

03\*C. [P. 36]

---

**Children  
and education**

03\*D. [P. 38]

---

**Children  
and health**

03\*E. [P. 41]

---

**Children  
and housing**

03\*F. [P. 43]

---

**Children  
and  
discrimination**

03\*G. [P. 45]

---

**Children  
and migration**

03\*H. [P. 47]

---

**Children  
and exploitation**

03\*I. [P. 55]

---

**Solutions  
for children  
who have  
infringed the law**



### 03\*A. Children and identity

Identity aims to recognise a person as a unique individual who participates in citizenship. It is essential in the recognition of rights and obligations and, depending on their status (woman, child, refugee, etc.), it allows people to benefit from services offered by States. There is also a collective aspect to identity, as it marks a person as belonging to a particular ethnicity, culture or nation.

A child's right to identity, established at international level<sup>(01)</sup>, involves them having a name and surname, thereby determining their inclusion in a family. Depending on the law, the name handed down may be that of the father, the mother or both together. Identity also covers a person's date of birth, sex and nationality. A birth is normally registered officially with the authorities in the place of birth, which leads to the issuance of a certificate. In some countries, this document may be issued at the town hall or even at the place of birth when a qualified person is present (hospital).

(01) Article 15 of the *Universal Declaration of Human Rights*, Articles 7 and 8 of the *CRC*.

However, registration does not happen systematically, despite the fact that it is a parental duty and a state obligation. Now, a non-registered child does not exist legally and remains invisible in the eyes of society; (s)he can therefore be more easily exploited. In particular, they may find themselves without a nationality (stateless). Moreover, they cannot generally attend school nor have access to medical care (such as vaccinations) and it is very difficult for them to integrate socially. They cannot obtain permanent identity documents. Several reasons may explain non-registration: the complexity of the system, distance to the registration office, cost, which is sometimes an obstacle for the poorest families, or the lack of awareness of how important this step is.

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While problems with registering children are mainly seen in Africa and in Asia, certain European countries are not exempt (such as Greece or Romania). In Greece, things are particularly complicated in trans-national cases, when two States (those of the mother's and father's nationalities, for example) are involved. They are more complicated still when the child's parents themselves are in an irregular situation in the State where the child is born. This problem with registration has been raised by Greek street workers. In Romania, registration problems are mainly due to the slow, lengthy and laborious proceedings. Only temporary identity cards (maximum one year) with the note 'absence of domicile' can be issued in this country.

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### **03\*B. Children and family crisis**

In many cases, children and young people are unsettled by the separation from their parents, often torn and sometimes manipulated by both sides. From the point when the parents stop living together, a decision must be made as to who the child will live with. Ideally, the parents would agree but of course this is not always the case. When the father and mother both claim custody of their shared children<sup>(02)</sup>, it is the competent judge in family cases who must decide on the child's place of residence, as well as

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(02) *European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children* of 20 May 1980.

the possibility of granting the right to visit to the parent who does not obtain custody. In all cases, the decision must be taken in light of the best interests of the child.

Family crises may cause situations where a child must be removed from their environment for their own protection, when they are victims of ill-treatment by their parents. This separation must be a last resort, when there are no alternatives allowing the child to stay in their family environment. Unfortunately, all too often it is social services in charge of child protection which themselves are behind the decision to separate the child from parents, sometimes abruptly, with no explanation, and without the family really having had the chance to get their point of view across (this situation is notably being denounced in the UK at the moment). These cases are clearly far from the application of the notion of 'last resort'.

The *CRC* establishes that States Parties shall only separate children from their parents as a last resort, when their protection is at stake. In this case, both the parents and the child must have the opportunity to participate in the decision-making process, which may lead to a child being placed in a host family or home<sup>(03)</sup> because this decision has clear repercussions on the family unit. This international text also provides that all children separated from their parents (particularly in foster care, the detention of a parent or the child, deportation of a member of the family, etc.), or one of them (for instance: the parent with whom the child does not usually reside, following a divorce), must have the opportunity to maintain contact with them/him<sup>(04)</sup>. The *European Court of Human Rights* has delivered several rulings safeguarding the right of these children and parents to stay in contact even when separated, whether it is a separation from the parents<sup>(05)</sup> or through a withdrawal of custody<sup>(06)</sup>.

(03) Article 9 of the *CRC*. Article 8 of the same convention covers the child's right to preserve family relations. If it does not meet the criteria of best interests of the child, a placement decision would contravene the right to respect for private and family life (right enshrined in Article 8 of the *ECHR* and Article 7 of the *Charter of Fundamental Rights of the European Union*).

(04) Article 9 of the *CRC*, article 24 of the *Charter of Fundamental Rights of the European Union*, Council of Europe Convention on contact concerning children of 15 May 2003.

(05) Sommerfeld and Sahin v Germany of 11 October 2001, Volesky v Czech Republic of 29 June 2004.

(06) Andersson v Sweden of 25 February 1992.

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People working with children and young people very often see family conflict situations resulting in separations. They provide support and advice to the children affected, who are often very deeply scarred psychologically. They are also generally in contact with the child's family, friends, neighbours and the community as a whole. They inform, organise or sometimes participate in mediation meetings with the parents in order to help them understand their responsibilities, or they bring in a family counsellor (such as in Poland or the United Kingdom). When they identify a family conflict, workers may contact a specialised magistrate, the relevant social services, or the police, sometimes after having attained the child's agreement (for example in the Czech Republic).

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Relateen is a counselling service in the United Kingdom, specialising in difficult relationships. Any child who is having problems at home can contact this service. Counsellors can help them talk about things that are worrying them. Furthermore, young people are also encouraged to talk to their friends and to school staff so that they can help them.

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The child must be able to give their opinion in all proceedings likely to lead to a legal decision which affects them directly. Their opinion must be taken into account and, where possible, must have a bearing upon the decision taken. Freedom of information and expression is a fundamental right of all human beings<sup>(07)</sup>. The competent authorities must therefore put in place mechanisms allowing juveniles to be heard. Both international and national texts<sup>(08)</sup> attach conditions to this expression, depending on the child's level of maturity and their judgment. Depending on the country, the

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(07) Article 11 of the *Charter of Fundamental Rights of the European Union*, Article 10 of the *European Convention of Human Rights*.

(08) The right of the child to express their own views in all matters affecting them is covered in Article 12 of the *Convention on the Rights of the Child*, Article 24 of the *Charter of Fundamental Rights of the European Union*. The possibility for the child to be heard is included in many European legislations (Poland, France, Spain, Czech Republic, United Kingdom, and Romania.)

request to be heard must come from the child themselves (in France for example) or may be issued by a representative of the child (in Spain). This right is not limited to decisions made in the framework of justice but also affects important decisions which may be made by parents regarding their children, or decisions taken regarding school, etc. Generally speaking, this encourages social participation of children and young people<sup>(09)</sup>.

### 03\*C. Children and education

All children have the right to education, established in multiple international texts and national legislations; it is multi-faceted<sup>(10)</sup>. It does not focus solely on the right to attend a school but also covers the opportunity for intellectual development through activities which are not limited to the walls of the classroom. This is known as non-formal or informal education.

According to the *European Court of Human Rights*, education is "(...) the whole process whereby, in any society, adults endeavour to transmit their beliefs, culture and other values to the young" whereas teaching (or instruction) refers "in particular to the transmission of knowledge and intellectual development"<sup>(11)</sup>. In another judgment, it indicated that a Member State of the *Council of Europe* could impose compulsory education for children, whether in public schools or through private institutions where the quality meets their demands.<sup>(12)</sup>

It is true that educating children to read, write and count is very important for a nation's future and growth but it is far from being the reality for millions of children

(09) *Revised European Social Charter* on the participation of young people in local and regional life of 21 May 2003.

(10) The right to education is established in the following texts: Article 26 of the *Universal Declaration of Human Rights*, Articles 13 and 14 of the *International Covenant on Economic, Social and Cultural Rights*, Article 18 of the *International Covenant on Civil and Political Rights*; Article 28 of the *CRC*; Articles 1, 2, and 52 of the *International Convention on the elimination of all forms of Racial Discrimination*; articles 1 and 10 of the *Convention on the elimination of all forms of discrimination against women*; Protocol n° 1 of the *European Human Rights Convention*, Article 17 of the *Revised European Social Charter*, Article 14 of the *Charter of Fundamental Rights of the European Union*.

(11) *Campbell and Cosans v United Kingdom* of 25 February 1982, § 33.

(12) *Konrad et al v Germany* of 11 September 2006.

across the world. Nonetheless, education is an essential factor in the fight against poverty, as by acquiring solid basic knowledge, enabling them to take an interest in many areas, children can be socially and economically independent as they grow up.

In Europe, a large majority of children attend school and States have established a compulsory period of education, covering childhood and part of adolescence (from four or five to 15 or 16 years old, sometimes up to 18), which explains the particularly strict national laws on child labour, this last being incompatible with decent schooling. However, many young people are forced to drop out of school to look after members of their family (younger brothers or sisters, disabled parent, for example) or to help with the family's upkeep by working.

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**In the United Kingdom, 'Education Welfare Officers' endeavour to establish why children stop attending school and their inquiries may even lead to prosecution of the parents. They are in contact particularly with young people in the street who are 'suspected' of playing truant.**

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All States must promote children's access to schools, by ensuring free education and by prohibiting discrimination, as school can teach values of tolerance, helping to prepare children for their duty as citizens. This free schooling is enshrined in international texts but it should be noted that children's families are often required to buy supplies or books, take part in art and school activities, pay for the children's school dinners, and so on, throughout the year. Some associations provide school materials for families who cannot afford to buy them (for example, the Greek platform ARSIS).

School has become a place where physical, verbal and mental abuse is rife among young people themselves (in particular at break-times, out of sight of staff), but also between young people and staff members. This violent behaviour may lead to the young person concerned being excluded, and they will often struggle to find a new school which will agree to take them. In order to find solutions for young people who seem convinced that school has nothing more to teach them and who drop out (or who are at risk of doing so), or who are regularly involved in violence at school, street

workers hold dialogue in close collaboration with school staff in the neighbourhoods where they work.

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Indeed, despite high school enrolment rates, social and street workers in Europe are in daily contact with young people who have dropped out of school who are hanging around aimlessly in the street, with no desires or convictions, other than the belief that it is not worth returning to school. Discrimination is not unusual in schools. Thus, Belgian street workers have observed that children and young people from vulnerable backgrounds and in particular of foreign origin, are often pushed to quit the classical general education system to be steered towards specialised or vocational establishments as well as courses which are considered to be second rate. In Poland, these young people are sent to physiotherapy centres or correction centres where they are forced to continue with school. In the United Kingdom they are sent to inclusion projects led by unqualified teachers (for example youth workers). These projects often have the goal of preparing young people to return to general education but in actual fact, that rarely happens and they reach 16 without ever having completed their formal education. We must therefore work more inclusively with the young people themselves and the other stakeholders concerned, to prevent them dropping out of school.

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These decisions as to which courses students will follow are usually taken without thorough consultation with either the young person concerned or their parents and, given their lack of motivation, young people leave school. Some workers have been able to help young people who were doing well in the general system, to voice their opposition to such a decision.

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Help with homework is also frequently part of the job for street workers in several European countries (Belgium, Greece, etc.). Sometimes classes are organised (for instance the Greek street workers' platform organises Greek and English lessons as well as IT workshops). In Romania, an educational centre of the street workers' association Parada is set up in a public school in Bucharest as an interface between the

street and school, in order to support the reintegration of children who have dropped out. In France, help with homework and the provision of methodological tools are organised under local education support contracts (CLAS), but other less formal activities are also run.

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Street workers' platforms carry out many non-formal and artistic activities with children and young people, in order to maintain a trust-based relationship.

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In Greece, children, young people and families go to a day centre where they can watch DVDs, receive psychological support or benefit from different tuition. In Poland, workers in Warsaw run activities allowing young people to leave their neighbourhoods and discover others. In Romania, a social youth circus has been set up. In the United Kingdom, youth workers encourage young people to write out a list of the consequences of school absenteeism or to design a leaflet about risk-free drug consumption, which enables them to develop their skills through informal learning.

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Educational activities can also be organised in the street, particularly with children working in the street in Greece. Thus, the " Action on the Road " tool offers creative and fun activities for these children, two hours a week (painting, games, collages and other forms of direct expression), in order to allow them to express their creative needs, to relax and to talk with the workers.

### **03\*D. Children and health**

The right of all people (and therefore children and young people) to enjoy the highest attainable standard of health is enshrined in several international texts<sup>(13)</sup>, and goes as far as describing the measures and objectives that States Parties must put in place to guarantee their effectiveness (such as reducing child mortality, guaranteeing the necessary medical and sanitary assistance for all children, combating disease and mal-

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(13) Article 24 of the *CRC*, Article 12 of the *International Covenant on economic, social and cultural rights*, Article 35 of the *Charter of Fundamental Rights of the European Union*.



nutrition, maternal care, information on health and nutrition, and prevention through education in particular). Public authorities must establish such conditions so that everyone can enjoy the best possible standard of health. This explains for example why children are prohibited from undertaking hazardous labour.

In a General Comment on the Right to Health (2000), the *Committee on economic, social and cultural rights*, which monitors application of the *International Covenant on economic, social and cultural rights*, affirms that the right to health addresses a number of aspects: timely provision of appropriate healthcare, access to safe and potable drinking water, access to an adequate supply of safe food, nutrition and housing, and access to health-related education and information, including on sexual health. For the Committee, the core elements to this right are: availability, accessibility, acceptability and quality.

In Europe, unlike other regions, children normally have access to the essential elements for good health, whether it be water, food, medicines or vaccinations. Some countries have established school health systems with compulsory medical visits or baby clinics. They also offer vaccination campaigns for the younger ones, and provide information on a healthy, balanced diet to combat the consumption of fats which may harm their health and lead to obesity. But European States are not exempt from criticism. In particular they must ensure access to healthcare across the national territory, and must distribute the infrastructure and healthcare staff across the towns but also in rural areas, in order to prevent the emergence of a two-tier health system.

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**Social workers in general and those in contact with street populations in particular very often meet young people suffering from infections, diseases and malnutrition. In order to improve the situation of these young people and to detect potential pathologies, these workers collaborate with public hospitals, NGOs which offer free medical check-ups, medicines, vaccinations and which facilitate meetings with specialist doctors (for example: in Greece). These young people with fragile physical or mental health can be steered by workers towards specialised institutions but they are sometimes met with obstacles, in particular because they lack identity documents (as has been seen in Romania).**

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The *Committee on the Rights of the Child* is particularly interested in adolescent health, especially eating disorders (bulimia, anorexia, obesity), or psychiatric disorders (such as suicide among young people) and sexuality. Parents are normally the primary guarantors of their children's health and their consent is required when it comes to medical operations (surgery, organ removal or other treatment decisions, etc.)<sup>(14)</sup>. They must therefore receive medical information in order to be able to accept or refuse the treatment proposed. But their personal actions and opinions (such as ill-treatment, traditional practices of genital mutilation, refusal of blood transfusions, etc.) can endanger their children's lives. This is why, when it comes to all things medical, both the child's consent and respect for their own will are essential when they are of an age to be able to take their own decisions. Thus in some national legislations, there are provisions whereby a child must consent to a surgery, and other provisions for anonymity when screening for sexually transmitted diseases, access to contraception for young girls, pre-natal advice, etc. National laws also include the possibility for young people to choose to have an abortion without their parents or guardians necessarily having to be informed (in France).

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**Social and street workers often hold discussions, with a view to raising awareness and informing young people about sexual practices and the dangers of unprotected sex. They are also very often in contact with young drug and alcohol users (drugs such as cocaine, ecstasy, heroin, amphetamines, cannabis, gas sniffing) and try to raise awareness. It is down to States to protect them from these products which seriously harm their health, and from delinquency as one particular result of drug trafficking<sup>(15)</sup>. Workers help them towards hospitals, or NGOs which provide support (in Poland and Romania). Effective treatment of course comes about through acceptance of the health problem. In the United Kingdom, there are agencies working mainly with young people who have been identified as drug addicts, and who want to kick the habit. These agencies talk with street workers in order to collect information on drug consumption among young people. The causes behind the drug problem must also be identified.**

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(14) Article 3 of the *Charter of fundamental rights of the European Union*.

(15) Article 33 of the *CRC*.

Juvenile justice professionals (juvenile judges, juvenile prosecutors) may decide to place a minor in a centre where they can follow a detoxification programme, but there are rarely enough places.

The child or young person placed in an institution with a view to being cared for must receive adequate physical and psychological treatment and the right to a regular review of their situation, as well as the circumstances of their placement<sup>(16)</sup>. Abusive placements for an unspecified duration because the medical, social and family circumstances of the child have not changed, must be avoided.

### 03\*E. Children and housing

The right to decent housing of an adequate standard, in conformity with human dignity for all individuals, is enshrined in various international text<sup>(17)</sup>s and even in some constitutions (in Spain, Finland, Greece, France and Belgium). It falls under the category of social rights and there is a clear link to the right to health and an adequate standard of living<sup>(18)</sup>. Lack of housing is a signature trait of great poverty and vulnerability. Housing is a fundamental factor of physical, mental, spiritual, moral and social development of children and young people.

When we talk about the situation of young people and children without housing, this may refer to those who are completely homeless and who do not know where they will be sleeping (for example if they have run away). But there are also children and young people who are placed in care to be separated from their families, because they are immigrants, because they followed a parent who left the family home (such as a mother who is victim of domestic violence who takes refuge in a specialised shelter) or children living in camps or shelters (such as the Roma), etc. Among situations which contravene the right to decent housing, we should also mention children and families living in insalubrious apartments, let at exorbitantly high prices by unscrupulous landlords.

(16) Article 25 of the *CRC*.

(17) Article 31 of the *Revised European Social Charter*.

(18) Article 11 of the *International Covenant on economic, social and cultural rights*, *UDHR*, Article 27 of the *CRC*.

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In Europe, street workers working with people in street situations do not know all the children and young people living and sleeping in the street. Nonetheless, some of them can give figures on this situation in their country. For example, there are no less than 5000 children living in the street in Romania, 2000 of whom are in Bucharest. In this country, a second generation of street children is emerging, born from adults who were street children themselves, from the orphanages under Ceausescu's regime. In the United Kingdom, research has shown that around 100,000 children and young people run away from home or from foster care every year.

Street workers tend to meet young homeless people when they have run away from home following an argument with their parents for instance, or because they are fleeing a particularly difficult family situation (violence, parents' alcoholism). This situation is usually temporary, (a few days or weeks). They may also be juvenile immigrants, whose request for asylum was refused, or from minorities, or young drug or alcohol users who are not in a fit state to go home. Most of these young people do not sleep in the streets, finding refuge with friends or relatives, or in squats and unsafe places. This population is therefore not very visible.

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Today it seems clear that the world of the homeless is not limited to adults; some European countries are seeing increasing numbers of homeless young people and families. Families, children and young people all have specific needs compared to 'traditional' homeless people, and there are fewer studies on them. Young homeless people are particularly exposed to violence in the street, and develop more health problems than those who have a home. Young people may end up in the street for various reasons (running away from the family home, leaving a care home where they had been placed); causes which differ from those of adult homelessness. They cannot therefore be treated in the same way as adults in the same situation. Homeless young people or young people who risk ending up homeless need support.

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When they meet homeless children and young people, street workers may contact their legal representatives (parents, guardians), as well as various authorities or

bodies: public services (such as the National Centre for Social Solidarity-EKKA in Greece), local social services, magistrates specialising in juveniles' cases, NGOs (in Poland, those working on drug addiction, the social mobile accident unit of Bucharest in Romania or in Belgium, etc.), specialised treatment centres, etc. In the United Kingdom, programmes have been put in place in the big cities (for example in London), consisting of medical staff doing rounds of the neighbourhood, in order to look after the health of homeless people. In this country, when workers conclude that the young person cannot safely return to the family home, a case is opened with the relevant social services so that they are looked after. The workers support the young person and ensure that they understand what is happening and that they have been heard by the people involved.

In Romania, the Parada association has set up a mobile socio-medical assistance unit ('La Caravana' centre) which works night and day and helps homeless children and young people in a risk reduction project.

### 03\*F. Children and discrimination

Non-discrimination is an essential principle of children's rights and human rights in general. It is enshrined in international texts which prohibit differential treatment of individuals because of their ethnic origin, skin colour, age, sex, political orientation, opinions, religion, etc.<sup>(19)</sup>. Unlike other international texts, the *CRC* adds to this list the prohibition of discrimination, of which children may be victim, given their parents' situation or opinions. For example children born outside of marriage are still victims of inequalities in certain European countries.

States must therefore take measures to remedy these inequalities and, when they adopt texts regarding the situation of children, they must ensure that they do not involve any unjustified differential treatment of children. They must also combat ine-

(19) Article 2 of the *CRC*, Article 14 of the *ECHR*, Article 21 of the Charter of *fundamental rights of the European Union*, Article 14 of the *European Convention on Human Rights*, Article 24 of the *International Covenant on civil and political rights*, Article 2 of the *International Covenant on economic, social and cultural rights*.

qualities in access to services in some geographical zones of the national territory that benefit from a certain level of autonomy, (such as the French overseas départements and territories, or the disparities between federated States in Germany). Alongside the prohibition of differential treatment for children who are in a similar situation, the principle of non-discrimination also involves treating people who are in different situations differently (i.e. failing to put in place specific policies for disabled children and treating them like all other children would be discriminatory!).

Alongside this 'legal' discrimination, which can be solved by legislative amendment, children from minorities are also often discriminated against, as well as immigrant children who are heavily stigmatised by public opinion, the media, etc. Young people among them also bear prejudices. Children, in particular disabled children<sup>(20)</sup>, those suffering from disease, and immigrants, are in fact deprived of equal access to education for example. Unfortunately many of these children and young people end up accepting this discrimination. Poverty may also be a source of discrimination (for example in the Czech Republic, children are separated from their families and placed based on the family's social or economic situation or the child's disability). Merely adopting legal standards is therefore not enough: programmes to raise awareness among the general public must also be put in place. In many European countries, organisations combating forms of discrimination have been created. These bodies may, among other things, receive individual complaints (such as: the Centre for equal opportunities and combating racism in Belgium, the High authority combating discrimination and promoting equality in France, the competences of which have been integrated with the Rights Ombudsman since May 2011).

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**In order to raise awareness among the children and young people themselves on issues linked to discrimination, street workers hold conferences and debates, and run information sessions in schools. In Greece, an educational manual on human rights for young people (COMPASS) has been drafted and adopted by many schools and**

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(20) The rights of disabled people are established in Article 26 of the *Charter of fundamental rights of the European Union*, Article 15 of the European Social Charter.

teachers who use it as a working tool. In the United Kingdom, schools develop programmes on subjects linked to discrimination (such as homophobia). In this country, youth workers also try to get positive stories about young people included in newspapers, promoting cross-generational projects bringing together young and older people, thereby fostering mutual knowledge of each of these groups.

### 03\*G. Children and migration

The European continent has been a land of immigration for many years. But while some countries like France have a long history of it, others have only seen a sharp spike in immigration in recent years or decades. This disparity in European migration explains why on a daily basis street workers, and social workers more generally, are seeing children coming from the four corners of the world (in Belgium and in Greece), whereas this population is fairly hidden (not necessarily inexistent?) in other countries (such as in Warsaw, Poland or Romania).

There are many reasons why children and young people may end up travelling to a State other than that of their nationality, mainly due to family, or to flee conflict or poverty, basing their hopes on a better life elsewhere. Whether their situation is legal or not, they have rights, and the States have a duty of care<sup>(21)</sup>. Now, the rights of foreign children and young people are not always respected, a fortiori when they arrive in a country unaccompanied by an adult in charge of them, more usually called "unaccompanied foreign minors – UFM"<sup>(22)</sup>. These minors are particularly vulnerable, in danger, left to their own devices. However, the legal protection framework for children in the host state applies to them.

These young people and minors are generally stopped when they try and enter European territory. Some of them seek asylum. While waiting to hear their fate, they may be placed in reception centres. *The European Court of Human Rights* convicted Belgium for having placed a child aged five (stopped for being in an irregular situation

(21) Article 14 of the *UDHR*, Article 22 of the *CRC*.

(22) Also called 'isolated' foreign minors, or 'separated children'.

at the border) in a detention centre for foreign adults, without assistance or protection and then sent back to her country of origin with no guarantee of care or support on the ground<sup>(23)</sup>.

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In Greece, the Association for social support to young people (ARSIS) has a shelter for unaccompanied minors where they are sent following a decision by the Ministry of Health or the Prosecutor. However, given the growing number of these young people in European countries, there are now not enough places. This is why in Brussels they are housed (either temporarily or for several months), in hotels, in unacceptable conditions of insalubrity. Their most basic rights in terms of health, hygiene, food, psychological support and mobility are not respected. In the Czech Republic, following the arrest of young people without papers, the police authorities try to find members of their families and if they are not able to, the young people are then placed in institutions.

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Foreign minors also roam the streets (in Greece, Belgium and Italy) and street workers try to support them despite a clear lack of resources. Many suffer from diseases. The needs of all these young people in terms of decent housing, balanced diet, access to healthcare and support in administrative and social processes, are vast. Street workers, together with child rights protection institutions, are reacting; denouncing the deplorable situation of these young immigrants, raising awareness among public opinion and the authorities to trigger progress. A court case thus appears the only way of guaranteeing their rights.

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In February 2011, the Children's Commissioner in Britain published a report, following a visit to a reception centre for young asylum seekers aged between 16 and 17 ("Landing in Kent: the experience of unaccompanied children arriving in the UK"). Based on the statements of these young people, the report proposed improvements in the way young unaccompanied asylum seekers are treated at national level.

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(23) Mubilanzila Mayeka and Kaniki Mitunga v Belgium of 12 October 2006.



Treatment of foreign children and immigrants in general is deteriorating, and the repatriation processes are toughening up. However, these returns, which are not explicitly prohibited by the international texts as they do not guarantee an absolute right for the individual to settle in whichever country they choose, must be undertaken with respect for fundamental rights. The State which has to remove a child who does not have the right to stay, must ensure that this decision is in accordance with the child's best interests, must guarantee that an adequate family reunification shall take place in the country of origin and must put in place a procedure guaranteeing the child's participation (and that of his/her legal representatives) in the decision-making. Lastly, there must be room to appeal in case of opposition to the removal measure and the child must have access to legal advice and effective legal aid.

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The United Kingdom's border agency has recently announced plans to set up a 'reintegration centre' in Afghanistan, in order to send back unaccompanied minor asylum seekers from Great Britain to Kabul (with no guarantee of bringing the family back together). Moreover, in 2011 the same agency announced a tough new process (the 'Independent Family Returns Panel'), organising family returns. The four-step procedure aims to return those who cannot stay in Great Britain in dignity, by aiming to ensure the wellbeing of the children.

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### **03\*H. Children and exploitation**

Exploitation of children, which harms their physical, mental and social development, is unfortunately rife across the globe. Exploitation of human beings is one of the most serious offences in organised crime. In Europe, there are very strict regulations in all countries on trafficking in human beings. In fact, when the perpetrators are identified and arrested, they risk long or even life prison sentences. But these harsh sanctions have not proven dissuasive as this a very lucrative market, operating in the shadows and where the law of silence reigns. Investigations leading to the arrest of human traffickers are thus lengthy and difficult.

This exploitation may take many forms (economic, social or sexual) but they are all closely linked. It is very often invisible (such as child domestic workers; very prevalent in some regions of the world but unfortunately also in Europe<sup>(24)</sup>), and is therefore difficult to detect and measure. This invisibility also makes criminal proceedings very difficult. However, it is essential to combat exploitation of these children, to allow them to attend school, to ensure they have a good state of health, etc.

### 03\*H.1. Human trafficking

This issue falls under the framework of the international prohibition of torture and cruel, inhuman or degrading treatment<sup>(25)</sup>. Smuggling humans, and in particular children, is a growing phenomenon. A 'child victim of trafficking' is a person under 18 years old who is recruited, transported, transferred, housed or hosted for the purposes of exploitation, within or outside a given country.

Trafficking in children is particularly linked to poverty in the family. Thus one form of trafficking in children consists of the sale of children for illegal adoption in developed countries. In Europe, children are trafficked from countries in the East of the continent towards the West. The fight against smuggling and trafficking in human beings must involve cross-border cooperation.

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**For example in 2008, an agreement was signed between Greece and Albania, to protect and assist victims of child trafficking. A police department to combat human trafficking was established. In 2004, two special prosecutors against trafficking were created in Athens. National legislation often states that victims of trafficking cannot usually be deported, unless their return home is done in security, dignity and with special care taken by the state of origin to protect their lives and their physical**

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(24) A case of domestic slavery in France involving a young African girl, who was a minor at the time of the events, went as far as the *European Court of Human Rights*. The French State was convicted for lack of criminal legislation at the time of the events which had led to the acquittal of the 'employers' of the young girl (*Siliadin v France* of 26 July 2005) under national law. In the proceedings the victim was supported by the *Committee Against Modern Slavery*.

(25) Article 7 of the *International Covenant on civil and political rights*, Article 3 of the *CRC*.

integrity. In Greece, when there is doubt as to the age of the trafficking victim, they must be considered as a minor until their real age is established.

European political authorities are sometimes slow to react to problems linked to human trafficking. Nevertheless, government initiatives do exist.

The British government in particular has produced a support tool in this area, focusing on women's safety and providing advice to victims of domestic violence, sexual violence, forced marriages, etc. And as part of the POPPY project, accommodation is provided for women who have been trafficked, in the form of 54 bed spaces in houses across the country.

### 03\*H.2. Economic exploitation of children (child labour)

In addition to a plethora of international standards prohibiting the worst forms of labour, slavery or forced labour<sup>(26)</sup>, child labour is particularly regulated in Europe by national legislations. Individuals under the age of 18 can have a job as long as this activity has no harmful consequences on their physical and psychological development and does not prevent them from pursuing their compulsory school education. This is the case for example of children working in the arts (actors or models) or teenagers who work during their holidays to earn a bit of pocket money (shop jobs, babysitting, or waitressing). Their working hours and conditions tend to be regulated, varying depending on their age and sector of employment<sup>(27)</sup>.

(26) Articles 5 and 32 of the *Charter of fundamental rights of the European Union*, Article 8 of the *International Covenant on civil and political rights*, Article 10 of the *International Covenant on economic, social and cultural rights*, *Geneva Convention on the worst forms of child labour* of 1999.

(27) *Convention n° 5 of the ILO of 1919 on the minimum age*, which prohibits children under 14 working in industrial establishments, *Convention on the minimum age (non-industrial labour)* of 1937; *Convention on the Minimum Age (Fishermen)* of 1959; *Minimum Age Convention (Underground Work)* of 1965, *Convention n° 138 of 1973 on Minimum Age for Admission to Employment* (economic sectors).

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In the United Kingdom for example, minors aged 13 to 14 can work during school holidays, five hours a day between 7am and 7pm except on Sundays, and may not exceed 25 hours of work a week. All children and young people must have breaks (one hour of break for four hours straight worked). However, there are no specific regulations as to wages for the under 16s.

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Differences exist in many countries in particular as regards young apprentices and interns, who today resign themselves and easily accept an unpaid job at the start of their careers, which is disadvantageous for young people from deprived backgrounds who cannot afford to work without pay. In France in 2009, a law was passed enforcing the payment of a work placement 'bonus' when the placement lasted longer than two consecutive months within the same academic year.

On the other hand, child labour becomes exploitation when the work endangers their physical and mental integrity, or even their lives. It may take various forms: work down mines, in factories, illegal workshops, domestic tasks for well-off families, work on family farms, etc. Most of the time, these children do not receive a salary or are underpaid, yet they work several days a week, several hours a day. In theory, two million children are working in Europe, but the data is rather unreliable. When they are not being exploited in factories, workshops or farms, children who work are fairly visible in the streets, or on public transport: they play a musical instrument, sell flowers or little gadgets, collect metal objects or old clothes, clean cars, etc. Children are more exposed to work because of their poverty and/or drug addiction.

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In Greece, street workers try to assist these children, by gaining their trust and informing the Juvenile Prosecutor, so as to find a centre which is likely to take them in. In this country, the children exploited through labour are often Roma or immigrants. In recent years especially, since the economic crisis hit Greece, the number of victims of child labour has risen sharply.

In Poland, street workers give vulnerable young people the chance to take part in a free programme. They buy them food, thereby limiting their need to work. Media

campaigns have been launched in collaboration with street workers, explaining that people should not give money to children in the street as this is part of the exploitation.

In the United Kingdom, local authorities often hire 'employment officers' to check that local businesses are not employing young people illegally. In this country, youth workers are also made aware of the legislation on child labour so that they themselves can inform the young people of their rights, and thereby prevent exploitation. Workers collaborate with agencies, organising voluntary projects for the young people.

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### 03\*H.3. Begging

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Begging, in the broad sense, is one form of exploitation present in European states<sup>(28)</sup>. Strictly speaking, it consists of asking passers-by for money without providing any service in return. It is incompatible with the values of citizenship, as it infringes upon human dignity; this being even more serious when the person begging is a child. The image of others and of themselves is seriously affected.

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Depending on the State, begging in itself may constitute an offence by law (in Greece and Poland), or by municipal decree (such as in some French towns) or not at all (in Belgium and Romania), but in very many cases, the authorities favour a security-based response (in municipal decrees taken by French city councils, in particular for some Parisian districts frequented by tourists). And when children are begging, it is shocking and bothersome. But in any event, criminalisation of begging is shocking because it is the victim of the system who is punished, when very often they are simply trying to survive!

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(28) *Convention of the International Labour Organization on the worst forms of child labour of 17 June 1999.*

There is also a great deal of European legislation punishing people who encourage children to beg and, when these people are their parents, they may have their parental authority either suspended or withdrawn entirely. The same goes for any benefits they may be receiving, as by letting their children beg, they are not fulfilling their legal obligations of protection and education.

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While some children beg alone (for instance outside the supermarkets in Warsaw), they are sometimes accompanied by an adult (mother or father), in order to arouse pity in people. In doing so, they contribute to the family economy. But, as we have seen in Romania, as they grow up they may become detached from their family, break the ties and end up permanently in the street. In Greece, street workers approach children who are begging and talk to them and their families about their needs, so as to draw up a plan for intervention. They also inform them of their rights. They collaborate with various authorities, services and institutions to find appropriate solutions and they often remain in contact with the children and families, to monitor and follow up.

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Too often, it is the lack of social policies, or the failure to utilise these policies (particularly given the irregular situation) which pushes these children and families into begging. In this area the criminal approach is very harsh because it often punishes the victim (the child who is begging), either directly or indirectly and it may have serious consequences on the child (imprisoning the parents, separation of the child from their parents, etc). Except for proven cases of exploitation, begging is usually done for survival. But this often in turn prevents enjoyment of other rights: the right to education and teaching, to leisure, to an adequate standard of living and development, etc.

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In Belgium, there are many initiatives assisting these children and families to try and provide a social response to the phenomenon and to promote school enrolment among children. A young mother begging with her child in her arms was sentenced to 18 months in prison by the court of first instance and then acquitted following an appeal on the grounds that begging with her child in her arms is not a crime. In the

meantime, the months she spent in prison had a grave impact on her relationship with her child; the harm done to him was difficult to heal.

### 03\*H.4. Sexual exploitation of children

Sexual exploitation of children may take different forms<sup>(29)</sup>. Sexual violence affects children all over the world. The *World Health Organization* defines sexual violence as “any sexual act, attempt to obtain a sexual act, unwanted sexual comments or advances, or acts to traffic, or otherwise directed, against a person’s sexuality using coercion, by any person regardless of their relationship to the victim”.

The ‘sex exploiter’ is someone who “takes unfair advantage of some imbalance of power between themselves and a person under the age of 18 in order to sexually use them for either profit or personal pleasure”<sup>(30)</sup>. Millions of children throughout the world are sexually abused by adults who, through intimidation, physical strength or manipulation, force children and young people to have sexual relations with them. They may be either unknown to the children or close to them. However, not all acts of violence and sexual exploitation are brought to the attention of the judicial or social authorities because they happen behind closed doors. While European States hand down very serious sentences for the perpetrators of sexual exploitation, this invisibility makes it hard for legal proceedings to be systematic.

Sexual exploitation of children may be for commercial ends and thus linked to child prostitution. Poverty unfortunately leads to thousands of children prostituting themselves all over the world and even in Europe. This has harmful effects, not only on their psychological development but also from a physical and health perspective (such as the risk of contracting sexually transmitted diseases like AIDS, unwanted early pregnancies, etc.).

(29) *Optional protocol to the CRC on the sale of children, child prostitution and child pornography* of 2002, *Convention of the Council of Europe on the protection of children against sexual exploitation and abuse* of 25 October 2007.

(30) This definition resulted from the first World Congress against *Commercial Sexual Exploitation of Children* in Stockholm in 1996, and was then taken up again at the *Yokohama Congress* in 2001.

One illustration of this form of exploitation of children for commercial ends is sex tourism. Tourism is the world's biggest industry, causing millions of people to move around every year, and involving billions of euros per day. Victims often come from deprived social environments, ethnic minorities or other socially discriminated groups. In these cases exploiters are either people who travel locally or outside their country of origin. They may therefore be nationals of the same country or of a foreign country. Sex tourists come from various socio-economic backgrounds and are of all ages. It is an invisible, taboo phenomenon, of which the police authorities, the government, the media and public opinion are all too often unaware. While we often think that sex tourism mainly happens in Asia, Africa or South America, Europe is not spared either, particularly in the east (Czech Republic, Ukraine, Russia, and Estonia to mention a few). The fight against sex tourism must involve actors at different levels: NGOs, tour operators, political authorities, national and international police authorities, etc.

It also involves raising awareness among travellers, and training staff in the tourism industry. Tourists abusing children may be taken to court by the judicial authorities of the country where this abuse is committed, but also by those in their country of origin, on condition that the countries where these abuses took place crack down on them too (principle of reciprocity). States such as France or Belgium have adopted extra-territorial laws allowing charges to be pressed against their nationals who have committed sex tourism offences abroad, even when legislation in the State where the acts have been committed does not include similar sanctions.

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**Work to combat sex tourism has been carried out in various European countries. We could mention the "No hay excusas" UNICEF campaign in Spain, the drafting of a charter or code of behaviour in France and Germany, based on collaboration between the relevant Ministries and stakeholders in the tourism sector.**

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Sexual exploitation of children has spread, due to new technologies and the internet in particular, which allows widespread circulation of photos and videos featuring children which anybody (not just paedophiles) can get hold of, 'safe' behind their computer. When children themselves surf the net, they can access this content and, through



chatrooms or social networks, come into contact with unscrupulous adults. The production and distribution of pornographic images featuring children are specific crimes in many European countries. Possession of pornographic images of children is in itself an offence. States generally provide the possibility of reporting websites containing such images, with a specialised department.

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Street workers and social workers carry out various types of activities in the area of combating sexual exploitation of children. Given the scarcity of data on this issue, under the AGIRE Project in Greece, the ARSIS association gathered data from the public authorities and private institutions, demonstrating that between 2008 and 2009, very many victims of sexual exploitation were identified in Greece. But many victims never disclose their situation or are not identified.

Organisations working on the issue of child sexual exploitation also endeavour to raise awareness. Thus the British platform member of the *International Network of street workers* invited the Director of the National Working Group for Sexually Exploited Children and Young People to a conference in 2011 to talk about the issue. It was decided to develop specific training for youth workers on the subject. Moreover, social workers and street workers alike may end up steering children and young people towards social and health authorities (Poland) or towards the police, as long as the complaints filed would not cause risk for the victims themselves (Romania).

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### **03\*I. Solutions for children who have infringed the law**

According to the *CRC*, "States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society"<sup>(31)</sup>.

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(31) Article 40.1 *CRC*.

"Justice for minors" and "juvenile justice" include international standards, procedures, mechanisms and groups working with minors who have committed other criminal offences. However, this definition should not be limited to children who have infringed the law; a section aiming to eradicate the causes of delinquency and to improve prevention measures should also be incorporated.

It is a complex subject because the consequences are many and difficult. When it comes to juvenile justice, the environment in which the young person has grown up must be taken into account, together with the various factors which have led them to infringe the law.

### **03\*I.1. The applicable texts in juvenile justice**

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Many international instruments on juvenile justice systems have been adopted. These norms are often poorly interpreted by States which take a repressive stance, rather than an educational one. In some cases, courts hand down the same sentence as they would for an adult, but just slightly reduced. For instance, a child who committed armed robbery would be sentenced to five years in prison and not ten, as for adults. This approach does not in any way respect international standards because the proceedings and sanctions are no different.

The *Convention on the Rights of the Child* is the trailblazer in this area. Juvenile justice is discussed at length, in particular deprivation of liberty<sup>(32)</sup> and administration of juvenile justice<sup>(33)</sup>.

The *United Nations Guidelines for the Prevention of Juvenile Delinquency* (Riyadh – 1990) focus on the vital aspect of prevention, and on economic and social strategies involving all areas of society, family, school and community, the media, social policies, legislation and the administration of juvenile justice so that it bears fruit and promotes the development of these children and adolescents within society.

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(32) Article 37 *CRC*.

(33) Article 40 *CRC*.

The *United Nations Standard Minimum Rules for the administration of juvenile justice* (Beijing – 1985); these rules guide States on how to put in place a system of justice for minors while respecting their rights and needs.

The *United Nations Rules for the Protection of Juveniles deprived of their liberty* (Havana – 1990) defines the notion of deprivation of liberty and sets out the applicable standards when a child is shut up in an institution or in a centre by a judicial, administrative or other public authority.

The *United Nations Economic and Social Council adopted the Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime*<sup>(34)</sup>. These Guidelines are part of the United Nations standards and norms on crime prevention and criminal justice.

The Guidelines provide a practical framework enabling the following objectives to be achieved:

- a. To assist in the review of national and domestic laws, procedures and practices so that these ensure full respect for the rights of child victims and witnesses of crime and contribute to the implementation of the *Convention on the Rights of the Child*, by parties to that Convention;
- b. To assist governments and international organizations, public agencies, and other interested parties in designing and implementing legislation, policy, programmes and practices that address key issues related to child victims and witnesses of crime;
- c. To guide professionals and, where appropriate, volunteers working with child victims and witnesses of crime in their day-to-day practice in the adult and juvenile justice process;
- d. To assist and support those caring for children in dealing sensitively with child victims and witnesses of crime.

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(34) *Resolution 2005/20 of 22 July 2005.*

In addition to the *United Nations*, the *Council of Europe*<sup>(35)</sup> has adopted a whole series of recommendations<sup>(36)</sup>, on all aspects of juvenile justice. We could mention for example the Recommendation on European Rules for juvenile offenders subject to sanctions and measures<sup>(37)</sup>, the Recommendation on social reactions to juvenile delinquency among young people from migrant families<sup>(38)</sup>, the Recommendation concerning new ways of dealing with juvenile delinquency and the role of juvenile justice<sup>(39)</sup>, or the Recommendation on the rights of children living in residential institutions,<sup>(40)</sup> etc.<sup>(41)</sup>

On 17 November 2010, the *Committee of Ministers of the Council of Europe* adopted the *Guidelines on child-friendly justice*<sup>(42)</sup>, i.e. behavioural guidelines to be followed. Violation thereof is not subject to sanctions. Like the afore-mentioned guiding principles and rules of the United Nations, they are a guide for States which are aiming to develop a justice system that includes all fundamental rights, for when they find themselves facing children who have infringed the law (who are suspected of having done so) or when an individual has harmed them.

Street workers are often in contact with young people who have infringed the law and also with police authorities, of whom they often have a very negative view. Children in street situations generally infringe the law through necessity, sometimes even for survival, without committing particularly serious crimes. Street workers talk generally with young people about what is acceptable and what is not, encouraging them to stop their criminal behaviour, informing them of their rights in particular when arres-

(35) For an explanation of the role and mission of the Council of Europe see the above section on international texts.

(36) Available at the following address: [http://www.coe.int/t/dg3/children/keyLegalTexts/Default\\_fr.asp](http://www.coe.int/t/dg3/children/keyLegalTexts/Default_fr.asp).

(37) *Recommendation CM/Rec (2008) 11*.

(38) *Recommendation Rec (88) 6*.

(39) *Recommendation Rec (2003) 20*.

(40) *Recommendation Rec (2005) 5*.

(41) We could also mention: *Recommendation Rec (87) 20 on social reactions to juvenile delinquency*, *Recommendation Rec (2000) 20 on the role of early psychosocial intervention in the prevention of criminality*, *Recommendation (2004) 10 concerning the protection of the human rights and dignity of persons with mental disorder*, *Recommendation Rec (2006) 2 on the European Prison Rules*.

(42) [http://www.coe.int/t/dghl/standardsetting/childjustice/default\\_FR.asp](http://www.coe.int/t/dghl/standardsetting/childjustice/default_FR.asp)

ted, and encouraging them to participate in police advisory groups, where they exist. But in their own activities, street workers try not to take account of the crimes that the young people may have committed (it is not up to them to judge their actions).

### 03\*I.2. Setting up a child-friendly system

The *CRC* defines a child<sup>(43)</sup> as every human being below the age of eighteen years, unless under the law applicable to the child, majority is attained earlier. The question then is whether a child can be treated in the same way as an adult. Do they have the same judgment capacity? Are they always sensible of their acts and the consequences thereof? The answers to these questions are precisely why such a specialised system has been set up.

It should be recalled that, in addition to appearing before a judge, juvenile justice also covers everything that comes before and after, namely the arrest procedure if they have infringed the law, and the post-trial procedure (imprisonment, different types of measures, diversion measures avoiding lengthy legal proceedings, etc.). Children and adults cannot be treated in the same way, given that the criminal system for adults cannot take into account the specific social and educational needs of children. Indeed, children differ from adults in their degree of psychological and physical development, as well as their emotional needs. Moreover, justice for adults more often involves deprivation of liberty. Thus, this system does not take into account the best interests of the child, nor does it deal with the underlying reasons which led them to break the law in the first place. This is why, with respect for their specific needs, children and adolescents must be excluded from the ordinary, adult justice system.

A child who commits a crime must be given the help they need, to emerge from delinquency. The system must combine helping the child with the interests of society and victims, so that they can feel that justice has been served.

It is not a case of mitigating or denying the violence, crimes or offences that a child may have committed, but rather of adopting an educational, needs-based approach.

(43) Article 1 *CRC*.

We must not get bogged down in a cycle of suppression/punishment, but rather promote a re-adaptation/reparations-based approach, for example through restorative justice which aims to restore the balance that has been disrupted by the crime committed. This alternative procedure endeavours to re-establish order and the social fabric, by promoting solutions to repair the damage, reconcile the parties and restore harmony in the community. This approach is highly educational for the delinquent juvenile.

This means that all decisions taken, whether by the public or private institutions of social protection, or legislative bodies, must take into account the interests of the child as an essential consideration.

### **03\*1.3. Prevention of juvenile delinquency**

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Prevention of delinquency is an essential aspect of all policies aiming to combat juvenile delinquency. In fact, crimes can be avoided if focus is placed on prevention. Thus it is worthwhile taking an interest in the underlying causes of delinquency, in situations which may lead a child to break the law. Examples include abuse suffered in childhood, lack of family or school support, alcohol problems, and poverty.

Families and children in difficult socio-economic circumstances need to be guided towards programmes which are adapted to their schooling or social needs, towards the assistance and resources that they need. Resources need to be put in place so that people can have access to education from a very young age. All people must be supported, with a view to preventing children breaking the law. We should not enter into conflict with the family, with a view to helping the child, but take into account the whole picture of the child's life and not focus on the individual alone.

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**In Scotland, children under 16 who have committed a minor offence will be dealt with according to their best interests by a children's hearings system, which will identify their un-met needs.**

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International instruments recommend that States take measures to address the specific health problems of young people: sponsorship, family therapy, liaison programme to provide the support needed by families.

However, for several years now we have been seeing a security-based approach to criminal treatment of minors, where the repressive aspect prevails over the educational aspect, which should in fact take precedence.

In recent years in the United Kingdom for example, there has been an increase in the number of civil orders which are used to control the behaviour of young people. Anti-social Behaviour Orders, or ASBOs, can prohibit certain activities, as well as access or return to certain areas. These orders are issued on the sole condition of the individual having had an anti-social attitude, causing harassment, alarm or distress.

#### **03\*I.4. Alternatives to the judicial system**

Measures envisaged in this area aim as much as possible to avoid the judicial system, by steering minors who have infringed the law towards social/health services. Judicial proceedings should be avoided where possible and desirable, given the cost-effectiveness this would entail. Rather than appearing before a judge, the delinquent minor may be asked to carry out work in the public interest or something of public usefulness, monitored by a social worker or by a specially trained police officer, made to apologise to the victim or to offer them reparations or some other mutually agreed substitution measure.

These measures allow the child to be kept out of the judicial system and therefore they are less likely to be stigmatised. Moreover, it should be noted that in the majority of cases, crimes committed by minors are less significant and families, schools or third parties have often already intervened.

Alternatives to the judicial system aim to make the child understand their responsibility for the acts committed in a less formal context than the judicial sphere, and in a context which they can better identify with and understand. This is why insofar as possible, a child should be kept in an environment which promotes their integration (family, school community, etc).

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In Finland for example, mediation between the victim and the delinquent is offered informally. When used, it may provide grounds for dropping the charges.

In Italy, pre-trial probation is used, where juveniles follow a programme approved by the judicial authority which gives rise to a pardon.

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Nonetheless, as the *Committee on the Rights of the Child* and the Convention recall, alternative measures can only be envisaged under certain conditions. Policies must specify in which cases these measures can be applied, the child must give their consent and must freely and voluntarily recognise their responsibility for the crime of which they are accused; police interventions, prosecutors and other actors have decision-making power as regards these mechanisms which must be regulated and the child's situation must be regularly re-examined; the child must obtain legal assistance to give their opinion on the alternative measures proposed to them. If the child then respects the measures, the case must be closed definitively.

### 03\*1.5. Children and the trial

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#### A– Arrest of a child

It is established<sup>(44)</sup> that in case of arrest, a child must be informed of the reasons for his arrest and shall be promptly informed of any charges against him. They cannot be subjected to cruel, inhuman or degrading treatment. Thus, if police officers handcuff a child suspected of selling cannabis in front of school pupils, the police are contravening the principles enshrined in various conventions<sup>(45)</sup>.

#### B– Guarantee of a fair trial

The guarantee of a fair trial is the second fundamental principle to be upheld by the judicial authorities. This is a guarantee for both adults and children. It is needed so

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(44) By the *International Covenant on civil and political rights*.

(45) The *European Court of Human Rights* has convicted several European States of violence committed by police officers against arrested minors (such as *Darraj v France* of 4 November 2010).



that human beings are not arbitrarily deprived of their rights and freedoms. The fundamental elements of such a guarantee are the presumption of innocence, information regarding the charges, the legality of the proceedings, legal assistance with preparing their defence, the right to be heard and the right of appeal.

### C– Criminal responsibility

In applying the Convention<sup>(46)</sup>, States must establish a minimum age from when a child is considered criminally responsible. It is up to each State to define this clearly. This age should not be confused with the age of criminal majority. It is between the minimum age of criminal responsibility and criminal majority that juvenile justice finds its place; above that is adult justice; below it, the minor cannot be brought before a court but, if they have committed a crime, they fall exclusively under the remit of the relevant social services.

There is great disparity between the minimum age of criminal responsibility in force in each country, as shown in the table below:

Country	Minimum age of responsibility enshrined in law
Switzerland	7 years
United Kingdom	10 years
Netherlands	12 years
Germany	14 years
Spain	16 years

(46) Article 40 CRC.

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In Belgium, there is no real fixed minimum age limit of responsibility. However, it should be noted that the measures that a judge may take regarding a child under 12 are limited. They are mainly educational measures which keep the child in their living environment.

In France, specialised legislation does not set an age for criminal responsibility, as it is linked to the judgment. Up to the age of 18, juveniles who have infringed the law may have educational measures applied, or educational sanctions from the age of 10 and a prison sentence from the age of 13. A 2008 report drafted with a view to thorough reform of criminal juvenile justice proposes "setting the age below which a minor may be exempt from criminal justice at 12".

In the Netherlands, the STOP-reaction programme permits a response to criminal offences committed by children under 12. It is based more on the civil code than the criminal code. Part of the programme is entirely voluntary and focuses on the child and its parents.

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## **D– Deprivation of liberty**

The principle is as follows: deprivation of liberty must be an exceptional measure and if it is handed down as a sentence, must be for the shortest appropriate period of time.

It shall only be used as a measure of last resort and must be in conformity with the law. Indeed, detention prevents social reintegration and the child's re-adaptation.

Pre-trial detention (i.e. before the child has been judged on the facts of the crimes they are alleged to have committed) is particularly concerning, in that a child who has not yet been judged must be considered as innocent until proven guilty. Indeed, if the period of detention is too long, the *Committee on the Rights of the Child* judges that it violates the Convention. Before sentencing, a child must be able to stay with their family or host family for as long as possible.

If detention is inevitable, everything must be put in place to ensure that it lasts as short a time as possible and that the procedures are expedited so that the child can rapidly be informed of the decision concerning them (innocent or guilty and, if the

latter is the case, the sentence). Furthermore, the decision regarding deprivation of liberty must be regularly reviewed. Judgments handed down by the *European Court of Human Rights (ECHR)* reinforce these principles<sup>(47)</sup>. A child must have legal representation in order to be able to contest the legality of their placement in detention.

It should not be forgotten that if a child is placed in detention, they still retain various rights: contact with their family, the right to education, the right to enjoy their dignity and personal integrity, etc.

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(47) The two symbolic cases of the *European Court of Human Rights* on criminal treatment of minors having infringed the law, are *V and T v the United Kingdom* of 16 December 1999. They declare that minors who have committed an offence must be able to understand and effectively participate in their own trial and that measures to this end must be taken. The Court did not rule upon the particularly low age of criminal responsibility in the United Kingdom (10), given that there was no standard age of criminal responsibility within the Member States of the Council of Europe. It insisted on the need to treat a delinquent minor in such a way as to take full account of their age, their maturity and their intellectual and emotional capacities.

[THE INTER-  
NATIONAL

MECHA-  
NISMS

AVAILABLE,

IN CASE

OF VIOLA-  
TIONS

OF CHIL-

DREN'S

RIGHTS]

04

04\*A. [R.67]

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**General  
international  
mechanisms**

04\*B. [R.75]

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**Regional  
monitoring  
mechanisms**

04\*C. [R.78]

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**National  
Mechanisms**

**THE INTERNATIONAL MECHANISMS AVAILABLE, IN CASE OF VIOLATIONS  
OF CHILDREN'S RIGHTS**

States may tend to ratify an international convention with a view to improving their image among the international community, under pressure from other countries (this is often a condition included in multilateral agreements, such as accession to the European Union). But they do not always truly have the will to move things forward.

There is nothing more frustrating than seeing that a State has committed to respecting human rights, through the ratification of a treaty, but that in actual fact they are doing nothing. However there are mechanisms which allow the international community to monitor whether States are fully complying with their obligations in good faith, and to act to improve the situation in all countries.

**04\*A. General international mechanisms**

As soon as a violation of a child's rights has been observed, there are various options giving them visibility and the opportunity to react effectively. In addition to the possibilities in each State, there are international mechanisms which are less well-known because they often seem far-removed from the situation on the ground. If they are utilised correctly, they may be effective however.

International treaties establish bodies which ensure that States implement the principles enshrined within them. Certain international standards described in the first part of this guide have their own bodies or committees. Examples include the Human Rights Committee, which monitors implementation of the *International Covenant on Civil and Political Rights*, the *Committee against Torture*, the *Committee for the Elimination of Racial Discrimination*, the *Committee on the Rights of the Child* which monitors implementation of the *CRC*, the *Committee on the Rights of Persons with Disabilities*...each body for the respective treaty which they monitor.

Human Rights Committee (HRC)	Committee on Economic, Social and Cultural Rights (CESCR)	Committee on the Elimination of Racial Discrimination (CERD)	Committee against torture
United Nations human rights treaties			
Committee on the Elimination of Discrimination against Women (CEDW)	Committee on the Rights of the Child	Committee on Migrant Workers	Committee on the Rights of Persons with Disabilities (CRPD)

These Committees operate via six monitoring mechanisms (but not all of them apply to every committee):

- reports;
- communications from States Parties regarding other States ;
- communications from individuals regarding States (individual appeals);
- inspections;
- inquiries;
- early warning measures.

In addition, there are mechanisms called "Special Procedures". They focus on either the situation in a particular country (country mandate), or a specific cross-cutting problem across all regions of the world (thematic mandate such as the United Nations Special Representative on Violence Against Children, for example).

## 04\*A.1. Reports

The eight afore-mentioned committees may all use this mechanism. These reports focus on the human rights situation in a State Party since it acceded to the treaty. They are sent to the Committee mandated to monitor the implementation of the treaty in question.

The Committee takes into account its concluding observations to the previous report, and must mention progress made in terms of human rights. Where obligations inherent under the treaty are not respected, States must explain the difficulties that they have or that they could come up against regarding implementation. Very often NGOs send an alternative report, which allows for a more critical examination of the official report, and which very often provides more specific information arising from their experience in the field.

Following examination of the report, which takes place during a Committee session where the State Party is invited to present it and answer questions, the Committee adopts concluding recommendations which must then be put in place by the State Party.

Reports must be submitted by States within one or two years following the entry into force of the treaty (initial report). Subsequently, States submit a periodic report within a regular time period (often every five years). To make them easier to read (and to enable comparison between the countries and between reports from the same country), they must be drafted according to the same format.

### **The example of the *Committee on the Rights of the Child***

The *Committee on the Rights of the Child* is made up of 18 independent experts. It is the body that monitors the implementation of the *CRC* and its two optional protocols. It sits in Geneva and meets every year for three sessions of three weeks each.

States submit an initial report within two years of ratification of the *CRC*. Then, every five years, they must submit a periodic report. They set out progress achieved, in order to correctly apply the principles enshrined in the *CRC*. The Committee examines each State report then presents its recommendations in the form of 'concluding observations'. Given that they acceded to the *CRC* over two years ago, all European States have already submitted an initial report, as well as various periodic reports.

Information provided by individuals is not directly examined by the Committee. However, they may relay it through NGOs such as *Defence for Children – International*, *Save the Children*, and United Nations agencies such as UNICEF or the *High Commissioner for Human Rights*, which may submit alternative reports or any relevant information, to better enlighten the Committee. The role played by these organisations is essential, because the Committee members are not necessarily aware of the specific situation in each country and States often tend to paint a rather rosier picture of the situation than is necessarily the case.

A State's report and the information submitted by NGOs is analysed in several phases (see below):

- 1: A working group analyses the information and sends a list of issues to States, which can then prepare for the dialogue that will take place during the public session;
- 2: During a closed pre-sessional meeting, the Committee hears from NGOs, children (when the NGOs have brought children together to allow them to speak on this), as well as United Nations agencies, and takes into account all the relevant information which will allow them to fully understand the situation of children's rights in the country concerned;
- 3: During the public session(s), the Committee examines the report and holds dialogue with the State concerned, on the basis of which the Committee submits concerns and recommendations, through its 'concluding observations'. The State must then publish these observations.

The purpose of the Committee's recommendations is to help States implement their obligations. While it does not issue sanctions, the Committee can nonetheless be severe if a State is acting in bad faith or making little progress towards respecting their commitments. The *Committee on the Rights of the Child* does not yet have individual complaint mechanisms in place, but this mechanism was recently adopted by the *United Nations General Assembly*. It will enter into force if a sufficient number of States ratify this new additional protocol.



### Timetable of reports submitted to the *Committee on the Rights of the Child*



Ratification of the Convention by the State Party



Two year period



1st report submitted by the State Party



Alternative report from NGOs



-session (closed): one half-day per country being examined  
 - hearing from NGOs  
 - hearing from United Nations agencies  
 - hearing from children  
 - hearing from the ombudsman



List of issues sent to the State Party



Public session (Committee/State Party dialogue: the public may attend  
 but may not speak).  
 One day per country



Recommendations issued by the Committee



Publication of recommendations by the State Party



Application of recommendations by the State Party



Five year period



State Party's periodic report  
 The reporting cycle starts again with the official report, the alternative report,  
 the list of issues, the pre-session, etc

### **04\*A.2. Communications issued by States**

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The Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, the International Covenant on Civil and Political Rights and the Convention on the Elimination of All Forms of Racial Discrimination make provision for States Parties to submit complaints about another State. However, the latter must be party to these conventions themselves. This entails a State 'filing a complaint' against another State if they find that the State in question is failing to respect their obligations under the treaties.

### **04\*A.3. Communications issued by individuals**

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Any individual who claims that her or his rights have under the covenant or convention have been violated by a State party to that treaty may bring a communication before the relevant committee. This mechanism applies to all Committees except the *CRC* (but an additional protocol to the *CRC* has just been adopted making provision for this; a certain time period must elapse before it can enter into force).

These are individual complaints against a State which are only admissible if an individual has exhausted all domestic remedies. This means that the person must have used all avenues available under the State's domestic law, and that there are no further possibilities of having the violation of their right recognised, other than bringing it before one of the Committees.

Of course the State must have ratified the communications mechanism, so that it can be invoked by an individual.

### **04\*A.4. Inspections**

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The Optional Protocol to the *Convention against Torture and other Cruel, Inhuman or Degrading treatment or Punishment* created the Sub-Committee on Prevention of Torture, which inspects places of detention (prisons, immigrant detention centres, psychiatric hospitals, etc.) and any other places where people are or may be deprived of their liberty.

Its powers are broad and varied. It may, in particular:

- have access to all places of detention;
- have access to all information on the number of people deprived of liberty in these places of detention;
- have access to all information on the treatment of these people and their conditions of detention;
- conduct private interviews with the people deprived of their liberty, without witnesses;
- conduct interviews with anybody holding information that the Sub-Committee deems relevant (including NGOs which are often an important source of information).

#### **04\*A.5. Inquiries**

The *Committee against Torture* and the *Committee on the Elimination of Discrimination against Women* have created an inquiry system on their own initiative. Inquiries are only possible in cases where the Committee has received reliable and well-founded information that a State Party is systematically violating the rights enshrined in the Convention. Inquires can challenge the State as to the violations that they have committed.

Inquiries may only be undertaken with respect to States Parties who have recognised the competence of the relevant Committee in this regard. The State's cooperation is sought, which is why the inquiry is confidential.

#### **04\*A.6. Early-warning measures and urgent procedures**

This is a procedure only put in place by the Committee on the Elimination of Racial Discrimination, used when deemed necessary to deal with emergency situations, serious violations of the Convention and thereby to prevent situations escalating into inter-ethnic conflict or violence.

### 04\*A.7. The Special Procedures

This is a specific mechanism put in place by the Human Rights Council; it may be carried out by one person (Special Rapporteur, Special Representative of the Secretary General) or by a working group.

These people (or working groups) are granted a mandate, the aim being to look into major phenomena of human rights violations worldwide (thematic mandate); but it may also be a case of analysing the human rights situation in a particular country or region (country mandate).

There are currently 33 thematic mandates and 8 country mandates. Mandate holders examine, monitor, advise and publicly report on human rights situations in a specific situation or region. Various activities are undertaken by special procedures, including responding to individual complaints, conducting studies, requesting governments to respect fundamental rights, etc.

Some of these special rapporteurs look at issues directly relating to children; for example the *Special Representative of the Secretary General for children and armed conflict*, the Special Representative of the Secretary General on Violence against Children, the *Special Rapporteur on Trafficking in Persons, especially women and children*, and the *Special Rapporteur on the sale of children, child prostitution and child pornography*.

### 04\*A.8. The Universal Periodic Review (UPR)

This is a fairly new mechanism, which applies to all countries in the world under the auspices of the United Nations Human Rights Council.

The aim of this mechanism is to review the situation of all human rights, and therefore of children's rights, in the 192 UN Member States who are assessed by the other States.

States may be reminded of their responsibilities and helped to improve the overall situation and thus deal with all human rights violations. Indeed, even if the State being reviewed has not ratified the conventions protecting human rights, the review will be based on the Universal Declaration of Human Rights of 1948.

### **04\*A.9. The International Criminal Court (ICC)**

It was officially created on 1 July 2002. Its mission is to judge the most serious international crimes (crimes against humanity, war crimes and crimes of genocide). It may also judge the perpetrators of crimes where children are involved (in particular the recruitment and use of child-soldiers).

## **04\*B. Regional monitoring mechanisms**

### **04\*B.1. The European Court of Justice (ECJ)**

The ECJ is the judicial branch of the European Union. It is made up of three bodies: the *Court of Justice*, the *General Court* and the *EU Civil Service Tribunal*. Created in 1952, its mission is to ensure that European Union law is applied and interpreted in all member countries. The Court makes sure that the actions of the European institutions are legal, ensures that States correctly apply the obligations arising under the treaties and interprets EU law for national courts. Thus it is a defender of fundamental rights and human rights.

The Court finds that fundamental rights are an integral part of the principles which it monitors respect for. Its case law has greatly contributed to improving the standards of these rights. It draws on common constitutional traditions, existing international instruments and the *ECHR*. Furthermore, since December 2009, it has been able to apply and interpret the *Charter of Fundamental Rights of the European Union*, which improves protection of rights and therefore children's rights.

### **04\*B.2. The European Court of Human Rights (ECHR)**

Established in 1959, the *ECHR* is an international court which falls under the remit of the *Council of Europe*. It ensures that the *European Convention on Human Rights* is applied, by hearing individual or state applications alleging violations of the rights set out in the Convention. A case is always brought against a State, never against an individual. The Convention applies to all human beings and therefore to children as well. For example we could mention Article 6 which guarantees the right to a fair trial,

but also Article 8 which guarantees the right to a family life or Article 3 prohibiting torture and all inhuman or degrading treatment.

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In a ruling delivered in 1978<sup>(01)</sup>, the *ECHR* found that corporal punishment (three strokes of the cane) inflicted on a young delinquent constituted degrading punishment under Article 3 of the *ECHR* – Prohibition of Torture.

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It should be noted that the *ECHR* can only be applied to following exhaustion of domestic remedies; that is after having gone through the competent national courts without success.

During the proceedings, the Court may appoint experts or hear witnesses. In exceptional cases it may also undertake inquiries in different countries in order to establish the facts behind certain applications.

Rulings delivered by the Court are binding and States must execute them. They must amend their legislation and practices and ensure they avoid any new violation of the Convention, or they risk being re-convicted.

### **04\*B.3. The European Committee for the Prevention of Torture and other Cruel, Inhuman or Degrading Treatment (CPT)**

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The CPT was established by the *European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment*. All Member States of the *Council of Europe* have ratified it and it entered into force in 1989. According to the terms of this convention, no one shall be subjected to such treatment. The Convention protects both adults and children. The CPT is primarily a preventive mechanism, protecting people from this treatment; in this it is a complementary body to the *ECHR*.

In order to fulfil its mission, the CPT has broad powers, in particular as regards places of detention. After having notified a State of its intention to visit places such as pri-

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(01) *ECHR*, 25 April 1978, *Tyrer v the United Kingdom*.

sons, detention centres, immigrant reception centres and hospitals etc., the CPT may visit any of these that it wishes, and assess the way in which people deprived of their liberty are treated. Delegations which undertake these visits benefit from unlimited access and may move around without restriction. Following these visits, the CPT drafts a report which includes the observations made, recommendations and requests for information. The State concerned must provide a detailed response which will serve as a starting point for dialogue between the State and the CPT. Visits generally take place every four years, but that in no way excludes delegations from carrying out a visit, even unexpectedly, whenever necessary.

The Convention establishes that States and the CPT must cooperate with a view to protecting individuals. Generally its work is confidential, even though many States have agreed to publish the reports and responses. In addition, every year the Committee drafts a general report on its activities.

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For instance, the CPT was able to get a wall built in a prison in Turkey, because it suspected the existence of a torture room. It has also managed to close places of detention when the conditions of detention were in flagrant violation of fundamental rights.

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#### **04\*B.4. The Council of Europe Commissioner for Human Rights**

The *Commissioner for Human Rights* is an independent institution from the *Council of Europe* which has proven to be extremely relevant<sup>(02)</sup>.

As part of its mandate it must foster the effective observance of human rights and therefore those which affect children. It helps States to put in place the *Council of Europe* Standards, it promotes awareness of these rights, identifies possible shortcomings in human rights-based practices, facilitates the activities of the national human rights structures and provides reliable advice and information.

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(02) The post is currently held by Thomas Hammarberg; his positions and reports can be found online: [http://www.coe.int/t/commissioner/news/2010/101201bih\\_FR.asp?](http://www.coe.int/t/commissioner/news/2010/101201bih_FR.asp?)

This is not a court. Therefore it is not competent to hear complaints from individuals. However, based on well-founded information it receives regarding violations of individuals' rights, it may draw conclusions and take far-reaching initiatives. This is why it has privileged contacts with national institutions, NGOs, the *European Union*, etc.

## 04\*C. National mechanisms

### 04\*C.1. The children's Ombudsman

The children's Ombudsman is an independent institution, with the aim of defending and promoting children's rights. In light of this, it monitors the authorities' activity, ensures children's rights are respected and denounces any infringements of these rights. The *Committee on the Rights of the Child* believes that the Ombudsman is essential to ensure the effectiveness of the *CRC* and it advocates for it to be established in all countries.

It focuses on promoting recognition of children's rights and convincing the public authorities to meet their international commitments.

While the Convention does not include any express obligation for States to establish a children's Ombudsman, we believe that it is one of the necessary measures enabling the implementation of the rights in the Convention<sup>(03)</sup>. This explains why, given the lack of specific definition, the Ombudsman may take various guises. It may be a person or an NGO.

The Children's Ombudsman has certain prerogatives. He/it may, in particular:

- be heard by the *Committee on the Rights of the Child* during examination of the *CRC* provisions which cover its mandate;
- be invited by this Committee to give its opinion on areas under its mandate, or to present reports on the application of the *CRC* in relevant sectors;
- be invited to collaborate with the *Committee on the Rights of the Child*.

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(03) *CRC*, art. 4v



The Ombudsman has various missions. They can be grouped into four categories:

- Promoting the rights of the child: the idea is to promote understanding of children's rights among as many people as possible. Indeed, adults, children, and professionals in contact with children must be informed so that their rights can be respected.
- He/it must also analyse the legal and regulatory provisions which apply to children either directly or indirectly. For instance, he may check that sufficient budgets are ear-marked for child policies and, where they are not, suggest avenues for policy improvement.
- Monitor respect for children's rights: This is probably his best-known and most visible mission. He is tasked with defending the individual rights of children and young people. This means that the Ombudsman is a parallel avenue to the hierarchical and judicial routes, in order to help young people have their rights valued. He cannot deal with all cases, but must have an overall view of the problems which young people may face.
- Strengthen children's participation: it is important that children can express themselves and can participate in the debates which interest them. The Ombudsman must intervene, in order to put in place strategies so that children can truly express themselves and be consulted on particular regulations. To this end, he must collect their opinions and put in place measures to ensure children can participate in citizen life. He is therefore a privileged intermediary vis-à-vis the public authorities.
- Publish an annual report: as part of his mission, it is important that the violations committed, as well as the progress achieved in the area of children's rights, be known by all. The report is a useful tool in the implementation of a policy on children and young people. It allows the Ombudsman to formulate proposals and allows leaders to adopt appropriate measures.

Lastly, it should be noted that the Ombudsman must be adaptable, visible and accessible. Without these abilities, he cannot effectively fulfil his mission to protect the rights of children

## **04\*C.2. Other national mechanisms**

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There may be other mechanisms for monitoring or promoting human rights and children's rights in every country. These may be independent human rights commissions, human rights leagues (independent NGOs), or parliamentary commissions, among others.

In addition, States are regularly invited to draft national Action Plans regarding the implementation of children's rights (for example to achieve the *Millennium Development Goals*, to combat poverty, particularly among children, etc).

Observatories and research centres may also play a key role in drafting reports or doing research on themes linked to children's rights, which will shed light on certain situations, through research and suggested improvements.

THE INTERNATIONAL MECHANISMS AVAILABLE, IN CASE OF VIOLATIONS  
OF CHILDREN'S RIGHTS

	Accessible to individuals	Only accessible to States	Monitors the situation in a State and proposes assistance	Reacts to an urgent situation
At international level	<p><i>Committee on the Rights of the Child</i> (just been adopted, not yet in force)</p> <p><i>Human Rights Committee,</i></p> <p><i>Committee against Torture,</i></p> <p><i>Committee for the Elimination of Racial Discrimination</i></p> <p><i>Committee for the Elimination of Discrimination against Women,</i></p> <p><i>Committee on Migrant Workers,</i></p> <p><i>Committee on the Rights of Persons with Disabilities</i></p>	<p><i>Committee against Torture</i></p> <p><i>Human Rights Committee and Committee for the Elimination of Racial Discrimination</i> (communications),</p> <p><i>International Criminal Court</i></p>	<p>Report: all committees, <i>Sub-Committee on Prevention</i> (Inspections),</p> <p><i>Committee against Torture,</i></p> <p><i>Committee for the Elimination of Discrimination against Women</i> (inquiry)</p> <p>Universal Periodic Review: <i>Human Rights Committee</i></p>	<p><i>Committee for the Elimination of Racial Discrimination, International Criminal Court</i> (judges the most serious international crimes)</p>
At regional level	<p><i>Court of Justice of the European Union</i> (for certain appeals),</p> <p><i>European Court for the Protection of Human Rights and Fundamental Freedoms</i></p>	<p><i>Court of Justice of the European Union</i> (from judge to judge), <i>Commissioner for Human Rights of the Council of Europe</i></p>	<p><i>Committee against torture</i></p>	
At national level	<p>The Children's Ombudsman,</p> <p>Independent human rights Commissions, independent NGOs,</p> <p>Parliamentary Commissions</p>		<p>National Action Plans, observatories (helping States)</p>	

# [HOW TO USE THESE MECHA- NISMS]

# 05

FIRST  
REFLEX <sup>[P. 83]</sup>

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**Information**

SECOND  
REFLEX <sup>[P. 84]</sup>

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**Reaction**

THIRD  
REFLEX <sup>[P. 85]</sup>

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**Legal  
intermediaries**

FOURTH  
REFLEX <sup>[P. 86]</sup>

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**Political  
and parliamentary  
intermediaries**

FIFTH  
REFLEX <sup>[P. 87]</sup>

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**Alliances**

SIXTH  
REFLEX <sup>[P. 87]</sup>

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**The press**

SEVENTH  
REFLEX <sup>[P. 88]</sup>

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**Documenting  
situations**

EIGHTH  
REFLEX <sup>[P. 89]</sup>

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**Using  
the international  
organisations**

NINTH  
REFLEX <sup>[P. 90]</sup>

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**Involving  
young people**

Having recalled the fundamental texts and principles governing children's rights, having reviewed the specific rights to which children are entitled and the international mechanisms available in case of violation of children's rights, it is now time to look at how street workers, and more generally how all social workers working for children and young people, can use these mechanisms specifically in practice.

This part of the text sets out nine basic reflexes which street workers may use to react to the intolerable situations that they come up against.

### **First reflex: information**

Clearly, children are not well aware of their rights and sometimes do not realise that the situation they are experiencing is highly questionable and constitutes a violation of their fundamental rights.

It is therefore up to street workers to learn the basics: of course the aim here is not to turn street workers into specialised lawyers. However, they do need to be informed and encouraged to react when they see that young people's rights are not being respected; of course there are a number of obvious rights, with no need for an international convention to prevent inhuman or degrading treatment (such as sexual violence or economic exploitation). The most serious and visible violations are regularly denounced and children which suffer them benefit (or should benefit) from protection without the need to invoke international conventions.

Here it should be explained that the situation is not normal, not acceptable and that there is a way of reacting (even if it is not always easy and in many situations, the injustice is such that it takes strength to combat it).

However in many situations, things are less clear, and the violations are more concealed; informed eyes are therefore required. Recalling young people's main rights, (covered in the previous chapters), gives us an idea of the rights which should be enjoyed by young people, and their implementation.

For example, a young person whose school enrolment is refused on discriminatory grounds must know that this is not normal and that (s)he may react; the same goes for young people subjected to police brutality.

## **Second reflex: reaction**

Going beyond information, the untenable situations encountered must be followed up. Merely stating that rights are not being respected is of course far from being sufficient, and may create further frustration if nothing changes.

Once again, it is not a case of promising the impossible or of declaring that everything will change overnight. But what the young people concerned need is to see people who are prepared to fight to help them, and to have their rights respected.

There are many potential reactions and they will depend on the type of problem to be solved and the method of action envisaged. It would not be unusual to have to combine several types of reaction; some at individual level, others at the collective level.

Of course there should be no hesitation in getting the authorities involved and, if necessary, in denouncing situations which cannot be solved within the competent bodies, either nationally or internationally.

Of course this will be done with respect for the ethics and professional confidentiality of the social street workers, as well as respect for the private lives of the people concerned and after having carefully assessed the consequences of different types of reactions. It is also important to involve the young person (or people) concerned as much as possible with the reaction.

### **Third reflex: legal intermediaries**

In order to follow up on violations of children's rights, it is important to be able to turn to qualified legal professionals, who are accessible and sensitive to the situation. In many cases, there are legal and social aid associations which may be mobilised.

But many situations require lawyers and specialists in the subject concerned, above all when cases are to be brought before courts. Children are not like any other client: lawyers can be intimidating (and not just to children!), and they must be able to build a relationship of trust with the child, know how to understand and sometimes interpret their version of the case. Law is becoming so complex that a lawyer specialising in family law might not necessarily be capable of following a case involving migration for example.

In most cases it is important to refer to international human rights conventions from the outset of the proceedings, to then act at international level, if the possibility or need arises.

Lawyers are often viewed as not being very accessible, especially by young people who feel marginalised. This is where the intermediary figures of street workers come into play: it allows them to make the link between the young person and the legal professional.

The financial issue is often an obstacle to getting a lawyer involved; the young person and/or their family do not usually have the resources to pay a lawyer's fees and the legal costs. In most countries, there is a system of legal aid which allows impoverished

people to benefit from a lawyer's assistance for free (that is, at the State's expense) or at a reduced cost. It is thus important that street workers understand these systems and know how to get them involved.

Sometimes, lawyers agree to work on an occasional voluntary basis to defend people who cannot afford their fees, or who are in situations where there is a serious violation of fundamental rights. It is important to be able to pinpoint these professionals and to discuss how they wish to work, the number of cases they would be prepared to accept on this basis, etc.

Finally, where there are no legal aid systems for the poorest people, or where the systems that are in place do not function correctly, it may be particularly worthwhile setting up a permanent fund to finance this legal activity. Financing such a fund is of course a significant challenge, but certainly not impossible: seeking sponsors which are mindful of the defence of children's rights, asking associations to partly contribute to such a fund, and carrying out fund-raising activities.

In Belgium, the Youth Legal Service has had such a defence fund for over 25 years; it is kept topped up by the public authorities (and is generally used for legal proceedings against the public authorities!) which agree that it can be used independently; this fund has financed certain legal cases (including before the *Constitutional Court* and the *European Court of Human Rights*) which have made real progress in ensuring respect for young people's rights in the country. Of course, this is undoubtedly a relatively exceptional situation but it could be replicated elsewhere, in one way or another.

### **Fourth reflex: political and parliamentary intermediaries**

There are very often people within governments, in ministerial cabinets or parliamentarians, who could be made aware of certain situations. We should not hesitate to contact them therefore (parliamentarians being the representatives of the people) and to inform them about situations they are not always aware of, and suggest that they react.

Members of Parliament in particular must monitor the government's activity; they can contact a Minister, hold them accountable. They can also deposit a draft law, or a resolution.



They often require specific information with which to beef up their files. In some countries, there are parliamentary commissions dedicated to children's rights, with which stakeholders in the field can collaborate closely.

### **Fifth reflex: alliances**

It is essential not to be working alone in an area. It is important to identify partners with whom it is possible to follow up on observations made by street workers. These partnerships will depend on the national situation, the existing links, their strength and the will to work together.

Privileged partners, with whom we should be looking to work to ensure better respect for fundamental rights, include:

- Associations defending human and children's rights; they are generally a good intermediary so that the issues denounced can have repercussions and follow-up;
- Platforms and coordinated associations working in the field of children's rights; these exist in many countries, are usually well-structured and have a fairly broad mandate; they often draft alternative reports to the official government reports for international committees such as the *Committee on the Rights of the Child*; they also promote children's participation;
- The Ombudsman for Children's Rights (who may have different names depending on the country): many European countries have a general rights defender, as well as a specific children's rights defender which operates at local or national level; this is generally a crucial partner, which can be called upon and has the means to intervene; they are generally quite visible and are also represented at the international level through the *European Network of Ombudspople for Children*.

### **Sixth reflex: the press**

Many unacceptable situations persist, notably because they are not visible or because they appear to be isolated.

The press also tends to present things in a negative light, without taking into account the entire context; this is particularly true when it comes to young people labelled as

'delinquents' who are only viewed (and portrayed) as harmful to society; the social reaction, albeit disproportionate, appears to be justified in the eyes of the population.

Putting things in context, explaining, demonstrating the effects of certain measures or decisions, sometimes allows this mainly negative image to be counterbalanced.

It is important to have privileged contact points in the press; people who have a better understanding of the situation on the ground, who have often taken the time to meet the young people who are portrayed negatively in the media.

Of course it is important to remain cautious and to carefully measure the effects of media coverage of a situation; we know that sometimes it can do more harm than good, with backlash on the young person concerned, or culminating in violation of their right to private life.

Nonetheless, the press cannot be ignored when we want to denounce intolerable situations and give them greater visibility and impact.

## **Seventh reflex: documenting situations**

In order to plan reactions to a child rights violation, it is essential to collect as much information as possible, both quantitative and qualitative; how many young people are concerned, which rights are not being respected, who is responsible, what steps have been taken, what is the scope of the problem, what are the visible or foreseeable consequences, etc.

Detailed descriptions will be necessary, as will witnesses in some cases.

If in a town, young people are forced to live in the street because there are not enough reception structures available, because poverty has chased them away from home or for any other reason, street workers must try to quantify the problem, gather people's accounts, and describe the situation.

These descriptions and accounts must be included in reports, ideally together with recommendations and suggested solutions, which must then be distributed and transmitted to the afore-mentioned intermediaries, to the public authorities and, either directly or indirectly, to the international bodies tasked with monitoring the implementation of these conventions.

Solutions will often depend on the quality of the information gathered, the thoroughness of the research and the power of the statements collected.

## **Eighth reflex: using the international organisations**

We have seen throughout this work that there is a significant number of committees and mechanisms at the international level which can assess the human or child rights situation in a given country, formulate recommendations or act more concretely (and sometimes urgently) to put an end to intolerable situations.

But to do so, these bodies must be correctly informed and possess enough elements to shore up their position.

For street workers, it is important to know the existing mechanisms and how to use them. It will not always be possible to apply to them directly; it is therefore important to be able to pinpoint who in the country could serve as an intermediary and which associations draft alternative reports for these Committees, to incorporate the concerns of street workers.

It is also important to be aware of the timetables of upcoming national reports, visits of monitoring bodies (such as the *Committee against Torture*) and key times when it is possible to influence these bodies, such as during initiatives of the *Human Rights Council* or the *Committee on the Rights of the Child* (days devoted to juvenile justice, street children, children whose parents are in prison, etc).

Generally speaking, the websites of these organisations are good, and they feature the agendas for the sessions and the timelines for the various countries.

Here again, the NGOs tasked with drafting alternative reports are often in tune with important upcoming meetings and may provide information on the report-drafting process, and how to get content into these alternative reports.

At international level there are also NGOs (and NGO coalitions) which may act as intermediaries to challenge, give information, and identify key people to denounce situations.

## **Ninth reflex: involving young people**

Street workers do not need reminding of this but it is clearly fundamental that young people be involved in all actions and reactions. Moreover this is one of their rights recognised by the *CRC*.

At the individual level, getting the young person involved means informing them of their rights, involving them in all approaches which are undertaken, getting their consent every time something affecting them is done, explaining the consequences of the steps taken, the results anticipated, not forgetting the potential negative risks or effects. That also means equipping them with as many resources with which to achieve the steps as possible (a more educational approach which will doubtless have more lasting effects) and allowing them to express themselves to the authorities where possible and desirable.

At the collective level, that means gathering testimonies from young people, using their experience and also the way they express things as a basis. Pooling ideas and suggestions from young people themselves is often a very worthwhile point of departure, to promote changes at the global level. Passing on what young people say is a very powerful lobbying tool. The same goes for international processes. The *Committee on the Rights of the Child* attaches great importance to children's participation in the reporting process, during the NGOs session in Geneva for example.

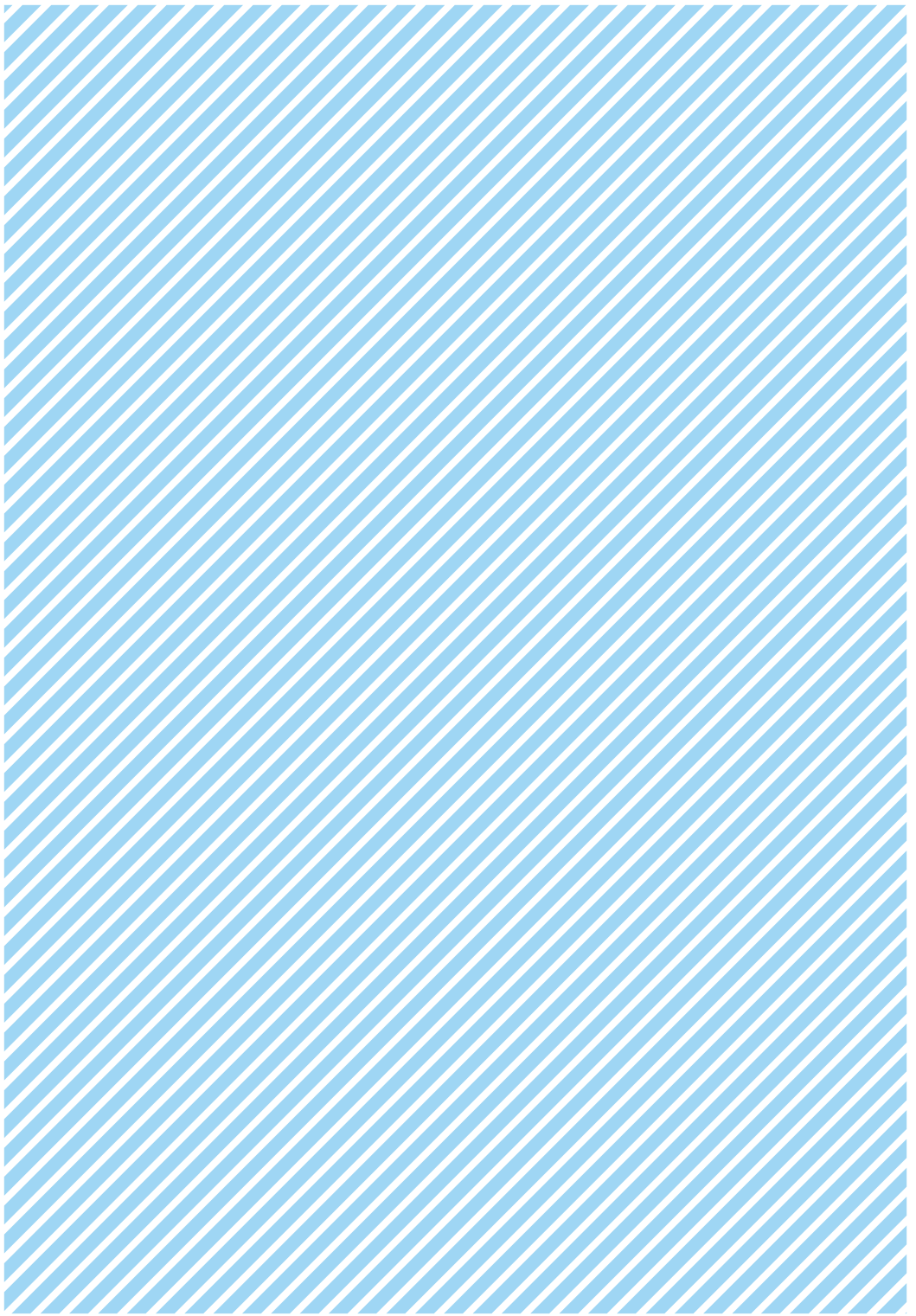
There are of course many ways of promoting young people's participation at the highest level; reports which include their stories, video-recordings of their accounts, delegations of young people meeting an authority (Parliament or a Minister) or a Committee (on the Rights of the Child for example).

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A website has been set up to support this guide, featuring links to the reference texts mentioned but also to websites with more information, useful references, Committee session timetables, and the conclusions and recommendations adopted.

All this information can be found at : [www.street-work.net](http://www.street-work.net)

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**Defending  
Children's  
Rights  
in Europe**

[ A Practical Guide ]



# Defending Children's Rights in Europe [ A Practical Guide ]

With the proliferation of international texts on children's rights, it is sometimes difficult to follow everything. What rights are children entitled to enjoy? How should we react if these rights are violated? Are there international mechanisms which can be activated to sanction these violations?

This guide aims to answer these questions. It is a reference for anyone in contact with children and more specifically for street workers who are direct witnesses of these violations.

The publication includes various chapters :

- It recalls the international and regional standards which are applicable in the field of children's rights;
- it describes the principles governing children's rights and recalls some of the rights they should enjoy;
- it sets out the various international mechanisms so that the rights outlined are fully respected;
- it explains concretely how workers can activate these international mechanisms and bring their knowledge to the attention of the international bodies.

In order to make the link between theory and practice, this guide contains various specific examples of reactions and procedures used in various European countries.

