

**TDHIF submission for the European Commission's  
Communication on the Rights of the Child  
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Terre des Hommes International Federation  
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## ***SECTION I***

### ***Questions relating to previous initiatives taken by the Commission***

- 1. The 2006 Commission Communication “Towards an EU Strategy on the Rights of the Child” establishes a comprehensive EU Strategy to effectively promote and safeguard the Rights of the Child in the European Union’s internal and external policies and to support Member States’ efforts in this field. What is your overall assessment of the Communication?**

The Communication launched by the European Commission in 2006 presents its failure both in the European Union’s internal and external policies above all in implementing the principle of **Child participation**, also in terms of empowerment and real recognition of children’s active role in the matters that affect them directly. This is partly due to an unclear and rather vague language used by the Commission in the Communication and relating to how concretely (in terms of actions, measures and financial instruments) to implement the principle of Child participation in the EU’s internal and external policies. What does it mean to include children “*formally in all consultations and actions related to their rights and needs*”<sup>1</sup>? Does the Communication refer to a real and effective participation of children or a formal one as stated in the formulation? The Communication appears unclear, vague and not coherent in its formulation with its purpose.

It is important to underline that effective child participation is more than a mere consultation as the Committee on the Rights of the Child has repeatedly emphasized. In addition, the participation of children should not be limited to projects explicitly devised for children and adolescents, it should be guaranteed in all matters concerning children and at all stages of policy development.

In its Communication the Commission highlights the need to link the rights of children to development cooperation but there is no mention on the concrete conditions in order to promote these rights. Considering that in many countries in the world, half the population is less than 18 years old, the rights of children should be applied and implemented as a priority, in all external actions of the EU which should be submitted to a child impact assessment.

In addition, the EU Strategy should envisage the same approach in order to oblige the financial organisations such as World Bank, International Monetary Fund and World Trade Organization to proactively promote the rights of the child and have appropriate actions at regional and global level. It is important to implement the mainstreaming of all child rights in all trade policies and not simply by addressing the issue of labour standards.

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<sup>1</sup> European Commission, *Communication from the Commission, Towards an EU Strategy on the Rights of the Child, COM (2006), Brussels 4 July 2006, Section II.4*

## *SECTION II*

### *Questions relating to the situation on the ground*

#### **A. Child-friendly justice**

##### **A I. Juvenile Justice System and children in conflict with the law**

**3 What are the main obstacles and problems for children in relation to justice systems (civil law, criminal law, administrative law, etc.)? In particular, what are the challenges and problems faced by children when they have to take part in a court case, either in a civil case, a case pertaining to migration and asylum matters, or a criminal case as victim or defendant?**

In many countries children in conflict with the law do not receive justice in accordance with the provisions of the CRC and other relevant international instruments such as the Beijing, Riyadh and Havana Rules about juvenile justice, as well as Tokyo and Vienna Guidelines both in Europe and in third countries. Children are too often deprived of their liberty either in the context of pre-trial detention (sometimes without any information about the charges against them) or in the context of the execution of a sentence in evident contrast with *Art 37 CRC*, which foresees the detention only “*as a measure of last resort and for the shortest appropriate period of time*”, and *Art. 40* that clearly recommends to deal with children in conflict with the law through diversion procedures without resorting, as possible, to judicial proceedings<sup>2</sup>.

Many countries adopt short-sighted policies that are aimed at achieving immediate political gain rather investing over the long-term in preventive approaches, in other words “*punish quickly rather than educate slowly*”. To varying degrees, the marginalisation of the juvenile justice system is a universal phenomenon.

In general, the protection of the rights of the child is easily and widely accepted when dealing with child victims (of traffickers, violence, etc.) but it is more difficult to accept when dealing with child offenders or criminals.

The Copenhagen Declaration on Social Development from the 1995 World Summit for Social Development<sup>3</sup> provided a vision for social development based on the promotion of social progress, justice and the betterment of the human conditions, based on full participation by all. Therefore children should be considered as participants and beneficiaries of an approach designed in the higher interest of their future and of society in which they live. In a general policy perspective, juvenile justice system and procedures should promote reintegration and not exclusion and stigmatisation of minors in conflict with the law.

Terre des Hommes through field work and research in developing third countries has detected the following problems and significant gaps:

- **Principle of punishment:** In many countries juvenile justice system is based on the principle of punishment

<sup>2</sup> UNODC, *Handbook of Basic Principles and Promising Practices on Alternatives to Imprisonment*, April 2007  
[http://www.unodc.org/pdf/criminal\\_justice/07-80478\\_ebook.pdf](http://www.unodc.org/pdf/criminal_justice/07-80478_ebook.pdf)

<sup>3</sup> United Nations (1995). *Report of the World Summit for Social Development (including the Copenhagen Declaration and Programme of Action)*. A/CONF.166/9.  
<http://www.un.org/esa/socdev/wssd/agreements/index.html>.

of children rather than re-integration and consequently it is focused on provisions of punitive and custodial measures. The principles of juvenile justice system should be restorative and not retributive.

- **Age of criminal liability:** Many third countries, although parties to the CRC, hold children criminally responsible for their actions at a very low and unacceptable age (7,9, 12 years old). In all countries in the world, including in Europe, the debate on the age of criminal responsibility reflects a tendency to refrain from restorative justice towards a strictly repressive justice system.
- **Lack of specialised legal system for children:** In its external policy, the EU Commission should consider that in many third countries, the Juvenile Justice System is often modelled on its adult counterpart. Sometimes, there is no separate justice bodies dedicated to responding to children in conflict with the law. Moreover, there is no experienced staff in terms of quantity and quality across the whole juvenile justice sector and therefore no commitment to international “*best practices*” in juvenile justice
- **Lack of coordination and communication among juvenile justice actors:** The lack of coordination among the different actors involved in the process leads to a deficit of communication and understanding of the role of each other. The different steps of the process are not coordinated.
- **Case management is absent:** In many countries, this point is strictly inter-related to the one mentioned above. Case management is a well-structured, systematic method of coordinating assessment, case planning, monitoring, review and termination processes to ensure an appropriate response to the child’s needs and his rehabilitation. It is the critical tool for the central organising process of all interventions with the child in conflict with the law. The lack of coordination among juvenile justice actors and case management produces the following consequences:
  - delays in processing cases
  - poor quality of the social inquiry reports without helpful recommendations to court
  - overuse of pre-trial detention
  - weak effectiveness of interventions.
- **Lack of alternative measures to custody and formal diversion process:** Even though most of the children apprehended have committed petty offences the majority of cases are sentenced by the formal Court process. The management of diversion process often depends on the discretionary power of the agencies in charge and there is no clear legal basis for diversion. Thus deprivation of liberty is rather systematic.
- **Lack of prevention programs:** Currently the emphasis in the field of juvenile justice is the prosecution and punishment of offenders. Little attention is given to the causes of children becoming delinquent. There are no specific dedicated services or programmes to prevent children from committing violations. Consequently social re-integration is more difficult while the risk of recidivism is higher.
- **Free legal assistance:** Not all children in conflict with the law are provided with free legal assistance. In many countries, like Jordan for instance, the presence of a lawyer is not obligatory or free. It depends also on a cultural factor: Juvenile Justice is not an attractive issue. To be a child defence lawyer is a specialization which is not adequately represented in the child protection scene and therefore represents a gap in resource skills required to ensure child protection and effective enforcement of laws.
- **Lack of post-release support:** In general children are discharged from their period of closed rehabilitation without discharge planning or preparation for their release and without reintegration and post-release support.

- **Lack of care and psycho-social programming during pre-trial detention and closed rehabilitation:** The psycho-social and educational activities provided to children are poor and there is lack of clear objectives and programming. No individual counselling is provided, neither to children nor to the staff and there is poor qualitative care for children. Moreover, according to our experience in many institutions visits, prevention of violence, mistreatment and sexual abuse in the detention centres should be considered as an emergency action

**4 What concrete initiatives would you suggest to make justice systems child-friendly? Do you consider that the EU can contribute to these initiatives and if so how? How can the EU contribute to ensure that children's rights, in particular the respect of the best interests of the child, are effectively respected in judicial decisions that concern them?**

Actually debate over Juvenile Justice is focused on the choice between “**Retributive or Restorative Justice**” (repression or education). Children in conflict with the law are first of all children at risk. Alternative measures contribute to child's reintegration and a constructive role in society of child.

Terre des Hommes is strongly committed in implementing projects aiming to a **Restorative Juvenile Justice model** which should be governed by the basic principles on the use of restorative justice programmes in criminal matters<sup>4</sup>, as set out in ECOSOC Resolution 2002/12<sup>5</sup> and it should respect the fundamental rights of children as enshrined in the CRC. The RJJ should be an integral part of the Juvenile Justice system and it is in full compliance with the provisions of the CRC<sup>6</sup> and international standards.

It is a way of treating children in conflict with the law with the aim of repairing the individual, relational and social harm caused by the committed offence. This aim requires a process in which the child offender, the victim and the members of the community participate actively to resolve all matters arising from the offence.

There is not one single model for practicing this restorative justice approach: it can be practiced via mediation, family group conferencing, sentencing circles and other cultural specific approaches. The outcome of this process includes responses and programmes such as reparation, restitution and community service. These programmes aim at meeting the individual and collective needs and responsibilities of the parties while achieving the reintegration of the victim and the offender.

Restorative justice should be applicable at all stages of juvenile justice process, either as an alternative measure or in addition to other measures. At the police level one of the options should be a referral of the child to a process of restorative justice. Police officers should be well trained and instructed regarding the use of this option. States should consider establishing a national body with the mandate to coordinate and supervise the implementation of juvenile justice, including restorative justice programmes

In order to contribute to ensure that children's rights are respected in judicial decisions that concern them, we urge the EU:

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<sup>4</sup> UNODC, *Handbook on Restorative Justice Programmes*, November 2006: [http://www.unodc.org/pdf/criminal\\_justice/06-56290\\_Ebook.pdf](http://www.unodc.org/pdf/criminal_justice/06-56290_Ebook.pdf)

<sup>5</sup> ECOSOC, *Basic Principles on the use of Restorative Justice Programmes in criminal matters*, December 2002  
<http://www.un.org/docs/ecosoc/documents/2002/resolutions/eres2002-12.pdf>

<sup>6</sup> *Committee on the Rights of the Child: General Comment N°10 Children's Rights in Juvenile Justice*, CRC/C/GC/2007/10 Geneva, 25 April, 2007  
<http://www2.ohchr.org/english/bodies/crc/comments.htm>

- To call upon the European countries, parties to the CRC, to undertake the necessary measures for the integration of restorative processes as a possibility for dealing with children in conflict with the law at all stages of the administration of juvenile justice
- To increase its efforts, above all in the external actions, to promote the use of restorative justice approaches dealing with offences committed by children and to assist States in their efforts in this regard where appropriate
- To increase its efforts, above all in the external actions, in order to exploit the full potential of its policy instruments (ENPI, IPA, etc) as tools to push the governments of third countries to recognize children's rights as priority. It is important to support and provide technical assistance to States in the development and implementation of restorative juvenile justice programmes, in particular by providing training to all actors involved in the sector of juvenile justice
- To recommend States parties to the CRC to undertake, as part of their comprehensive national policy on juvenile justice, the necessary measures to include restorative justice programmes as an integral part of the administration of juvenile justice.
- To recommend States when developing and implementing restorative justice to pay special attention to vulnerable children such as children in street situation, children and adolescents involved in gangs, armed groups and paramilitary groups, taking into account their specific daily reality, their problems and needs
- To develop and implement adequate and ongoing training for all the key actors in the administration of juvenile justice. Special attention has to be given to change the conventional legal approach and to establish and/or support the services necessary for implementing restorative juvenile justice programmes while using existing networks as much as possible. These services should practice an interdisciplinary approach, for instance by establishing multidisciplinary teams in conducting restorative juvenile justice among others with the view to address also the emotional needs of both the victim and the juvenile offender
- To call upon States to establish or strengthen the systematic collection of data on the nature and responses to juvenile delinquency in order to inform its polices with a view to adjusting them as necessary and to conduct or support research on the nature and the impact of the various responses to juvenile delinquency
- To develop and implement regional projects of restorative juvenile justice in different parts of the world
- To undertake any effort for the defence of the age of criminal liability within Europe. Here, indeed, debate over juvenile delinquency is focusing on lowering the age of criminal responsibility and building new detention centers for minors in conflict with the law.

**5. Are you aware of good practices, initiatives, programmes (including training programmes) or tools that contribute to enable judicial systems to take into account the specific rights, interests and needs of children? Are you aware of cross border initiatives in this area (e.g. cooperation with or participation to common projects, with organizations in other Member States, exchange of good practices, etc.)?**

As a principle, when dealing with juvenile justice, alternative measures must be the rule and detention the exception.

From February 2001 to December 2004, Terre des Hommes Lausanne was directly involved in Juvenile Justice in Kosovo. Through its pilot project Minors in Conflict with the Law (MCL) it implemented the **Community Service Orders (CSO)** in more provinces of Kosovo where there were no available alternatives to detention. Considering the particular post-war context in Kosovo, strengthening the juvenile justice was seen both as an opportunity in a country that was being rebuilt and an emergency due to an increasing number of juvenile offenders.

The Terre des Hommes pilot project was a success. The programme ended with the introduction of a **new Juvenile Justice Code** that specifically designates the **Probation Service** of Kosovo. It is a public institution and the sole body responsible for executing CSO measures. The Probation Service determines the type of community service work to be performed by the convicted person, designates the specific organization for which the convicted person will perform the community service work and supervise the performance of the community service work.

The CSO, which were provided in the legislation ensuring their sustainability, is a real educational sanction calling for personal commitment on the part of the juvenile offender. The minor agrees to carry out a number of non-paid hours of work for social institutions, public works, persons in need or even the victim of the offence. The purpose of this sanction is **to reintegrate the child in society and to introduce international standards in juvenile justice**, developing it in a way adapted to the specific context in Kosovo.

The establishment of the Probation Service represented a clear political willingness to introduce international standards on juvenile justice in Kosovo. This step represented an improvement for juvenile justice and CSO achieved results regarding the prevention of criminal acts done by juveniles. The unpaid work that they have conducted raised their awareness for their penal responsibility.

## **A.II: Children as immigrants, asylum seekers and refugees: the particular vulnerability of UFM**

**3. What are the main obstacles and problems for children in relation to justice systems (civil law, criminal law, administrative law, etc.)? In particular, what are the challenges and problems faced by children when they have to take part in a court case, either in a civil case, a case pertaining to migration and asylum matters, or a criminal case as victim or defendant?**

States Parties to the Convention on the Rights of Child have obligations towards all children within their territories, be they nationals or foreigners, asylum seekers, refugees, migrants, accompanied or unaccompanied. These obligations cannot be arbitrarily curtailed by excluding specific groups of children. Therefore, *“the enjoyment of rights stipulated in the Convention is not limited to children who are citizens of a State party and must therefore, if not explicitly stated otherwise in the Convention, also be available to all children – including asylum seeking, migrant and refugee children – irrespective of their nationality, immigration status or statelessness”*<sup>7</sup>

Unaccompanied minors make up a specific and vulnerable category as they are children, migrants and unaccompanied. This triple vulnerability calls for specific consideration and protection. Unfortunately until now these minors face many problems related to the answers offered by the protection system and identification asylum procedures which are not in line with the content of the Convention on the Rights of the Child.

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<sup>7</sup> Committee on the Rights of the Child General Comment N°6: Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6. Geneva, September 1<sup>st</sup>, 2005, Para.12: [www.unhcr.ch/tbs/doc.nsf/\(symbol\)/CRC.GC.2005.6.en?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(symbol)/CRC.GC.2005.6.en?OpenDocument)

The main and significant problems for children in the matter of migration and asylum are the following:

- **Detention policy** applied towards minors by many countries. In addition, the procedures in order to release them from the detention centres suffer from administrative obstacles and irregularity in the application of children refugee criteria with prolonged detention in some cases. This is a clear infringement of *Art.37* of the CRC which foresees the detention measure for minors only as a last resort and for the shortest possible period of time
- **Guardianship:** In some European countries, for example in Germany, unaccompanied minors are legally responsible in legal proceedings when they reach the age of sixteen and therefore they are without any kind of legal support.

In Belgium, although minors are taken into care by centers, the Guardianship Service takes them into care but it does not assign them a guardian if they are from a country belonging to the European Economic Area (EEA)<sup>8</sup>, in the Belgian law they are not included in the judicial category of the UFM. This could be easily interpreted as **discrimination** depending also on the different existing criteria for taking minors into care and supporting them and the lack of a common and harmonized legislation in asylum matter among the European countries

In other cases, as in France, the implementation of guardianship is a slow work for children who are close to being 17 years and the juvenile court judge has no obligation to refer the matter to the guardianship judge. Sometimes the guardianship is vested in a State body and works for the State. The State is thus both plaintiff and defendant. There is an evident **conflict of interest** there.

Children, often traumatized, are usually unable to cope with the challenges of legal proceedings on their own, while assessments of the child's situation do not fully consider the restrictions they face in submitting evidence. In compliance with the Convention on the Rights of the Child, unaccompanied minors should not be treated as adults or in any other special manner in legal proceedings

- **Lack of transparency:** In many European countries is difficult to visit the UFM centres managed directly by the public authorities. "**The best interest of children**" and respect of their privacy are arguments put forward in order to deny the access. According to some professional, it happens, on the contrary, to hide the fact that very often their rights are violated within the centres
- **Lack of data and figures:** The lack of a reliable counting of UFM is much criticized. The asylum procedure sometimes is the only way to obtain figures, but these data only offer a partial view of reality as there are UFM who do not apply for asylum and who never benefit from the protection system. Hence, some of them can be intercepted sometimes and by chance by the police but the number of cases reflects the work of the police and not the real number of UFM present in the country.
- **No access to adequate standard of living:** In many centres, very often there is a low level of care towards children and access to basic services. This is in contrast with the CRC

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<sup>8</sup> European Economic Area comprises of all the States which are part of the European Union to which must be added Ireland, Norway and Liechtenstein.

**4. What concrete initiatives would you suggest to make justice systems child-friendly? Do you consider that the EU can contribute to these initiatives and if so how? How can the EU contribute to ensure that children's rights, in particular the respect of the best interests of the child, are effectively respected in judicial decisions that concern them?**

In the EC Communication “*Towards an EU Strategy on the Rights of the Child*” 2006 the Commission refers to the challenge in order “*to ensure that the rights of children as immigrants, asylum seekers and refugees are fully respected in the EU and in Member States’ legislation and policies*” (Section 1.4.2). It is now mandatory that these words are filled with content at European and national level, in accordance with the Convention on the Rights of the Child. Therefore the EU has the liability to ensure the application of the following points:

- **Principle of legality:** Children should be considered first as children and not as a foreigners or asylum seekers. UFM's must be treated according to child protection legal standards and not exclusively according to an illegal immigration perspective. As such they have a legitimate claim to the rights and principles stipulated in the CRC. Any minor who is abroad has to be automatically placed under a system of child protection. In no case a minor should be removed under the pretext of being illegally present on foreign soil

In light of the ratification of the CRC by the European countries and the growing migratory flux, **we urge the EU and the European countries to jointly initiate the development of a specific legal status for unaccompanied foreign minors**, whether the UFM has applied or not, allowing for the harmonization of data in the framework of international collaboration and facilitating searches in cases of *disappearance*. **International standards** are straightforward. The “**best interest**” of the child has to become the **guiding principle** for any action taken and relating to children but the views of the child should be duly considered during the process (if it does not go against the child's best interest)

- **Principle of non-discrimination:** Unaccompanied foreign minors are most often spontaneously caught, identified and treated initially as foreigners before being considered as minors enjoying international protection standards. Even they are in a special situation by merely being present in a foreign country, the assessment of their condition should correspond primarily to the standards relating to the care of minors
- **Principle of vulnerability:** Children-specific reasons for flight should be explicitly (legally) recognized as grounds for the granting of asylum (such as recruitment as child soldiers, victim of child trafficking, fear of sexual abuse, etc.) and for offering protection to prosecuted minors as a particularly vulnerable group. They need special attention
- **Collaboration among countries:** Collaboration must firstly be established among countries of the EU. It should begin by creating a **special status for UFM's** and a European file for each child which would facilitate the monitoring of UFM's. It also occurs to strengthen a cross-border approach in order to facilitate the management of children considered at high risk of exploitation or trafficking
- **Legal proceedings:** In compliance with the Convention on the Rights of the Child, unaccompanied minors should not be treated as adults or in any other special manner in legal proceedings
- **Age assessment:** To verify the age of a minor and identify children with special needs (traumatised children) as quickly as possible are crucial aspects in legal proceedings. It is imperative that only qualified and impartial personnel is involved in these processes. Age assessment should be based on the degree of maturity of the child, the existing assessment methods used in case of doubt are not yet suitable and precise indeed
- **Family reunification:** To guarantee the best interest of the child and his/her right to a family. Every effort should be done to reunite an unaccompanied child with family members or close relatives and to avoid family

separation. When the term “*family*” is used, the best interest of the child should be taken into consideration

- **Access to essential services and adequate standard of living:** Minors should receive all necessary benefits to guarantee an adequate standard of living. The future development of the child must not be harmed
- **Possibility of naturalization for UFM:** At European level, this possibility should be enshrined in law, regardless of the asylum application process –i.e. whether or not a UFM initiates it – which implicitly gives them the benefit of children’s rights in compliance with the CRC. Minor refugees or minors under subsidiary protection should have equal access to necessary health care, including psychological counselling, education and job training as compared to children with citizen status. They should find shelter and receive benefits as are necessary to guarantee an adequate standard of living.  
In addition, adoption may be considered, subject to confirmation of the original family and the adopting family, when all legal procedures have been completed in both countries: this procedure facilitates naturalization
- **Measures in compliance with the CRC:** There should be absolutely no forced deportation nor pre-deportation detention or pre-trial detention of minors without papers. It is in full contrast with the CRC
- **Guarantee of suitable reception conditions:** The return of children must be in the best of their interest. Children should not be sent back to Member States that cannot guarantee the reception conditions suitable for children and which are in compliance with international accepted human and child rights. The same principle should be applied to the transfer of children to “*safe third countries*” or to “*safe country of origin*”
- **Taking into account the challenges:** To help minors in facing challenges it is important to guarantee a *child-appropriate* asylum procedure and provide for an initial residence permit for them for at least 6 months
- **Legal representation of minors must be clear and independent:** The child should be counselled by an independent legal representative who is not related to the State. The court should be alerted to conflicts of interest between minors and their legal representatives

**8. Do you consider that those working in justice systems in Member States are adequately trained to address the rights and needs of children in judicial proceedings and decision making? If not, can you identify and describe specific needs?**

In general, several shortfalls are present as to staff working in justice systems pertaining to migration and asylum matters. The lack of qualified personnel dealing with children (migrants, asylum seekers or refugees) does not respond to the needs of children, in particular:

- **Legal guardian:** Minors should receive a qualified and impartial legal guardian (preferably a person of trust) as well as appropriate legal support in as short time as possible. To guarantee asylum procedures as neutral as possible the legal guardian should not be provided by state agencies. Communication with child has to take place in a language which the minor asylum seeker speaks fluently enough
- **Interpreters:** States should provide for qualified interpreters in order to guarantee that the views of children are heard. The special situation of traumatised children (because of war, sexual abuse, violence, etc) asks for interpreters adequately trained to cope with the challenges of a child-appropriate procedure

- **Age assessment:** It is imperative, in order to verify the age of a minor and identify children with special needs (traumatised children), that only qualified (expertise in psychological and child rights matters) and impartial personnel is involved in these processes.
- **Hearing of children.** Questioning should occur in a manner suitable for children and should be carried out by personnel well trained. The EU should strongly commit to develop a suitable procedure for the hearing of children with experts as such pedagogues, psychologists, etc.

### **A III The disappeared UFMs**

#### **3. What are the main obstacles and problems for children in relation to justice systems (civil law, criminal law, administrative law, etc.)? In particular, what are the challenges and problems faced by children when they have to take part in a court case, either in a civil case, a case pertaining to migration and asylum matters, or a criminal case as victim or defendant?**

Actual information relating to *disappeared foreign minors* placed in institutions following a judicial or administrative placement decision are vague, approximate, fragmented and often unverifiable. **The lack of data and information increases the vulnerability of these children**, they become **socially invisible**, therefore **deprived of rights**, and highly exposed to many risks: sexual exploitation, undeclared employment, exploitation under duress in illegal activities, trafficking in human beings.

It is also important to add that some UFM, after releasing the centre, are admitted to another facility and register themselves under a different name. Therefore, also the lack of coordination in the gathering of data makes statistics uncertain. More and more adolescents from 15 to 17 years are put in the young adult category. The absence of distinction, decisive for the application or non-application of international standards, impacts on the lack of data on these minors and complicates the improvement of their protection through adequate solutions.

The triple vulnerability of unaccompanied minors (*as described at Section II/A.II*) calls for specific consideration and protection. According to Art. 20 (1) of the CRC “A child temporarily or permanently deprived of his or her family environment (...) shall be entitled to special protection and assistance provided by the State”. This means that if a child disappears from an institution, the State has the liability to search for him/her and assist.

In 2008 and 2009 Terre des Hommes Lausanne carried out a study “*Disappearing, departing, running away: A surfeit of children in Europe?*” on the *disappearance* of unaccompanied foreign minors placed in institutions comparing the situation in Spain, Belgium, Switzerland and France. The main value of this document is that it makes **visible** children who have become **invisible**, comparing the situation in four European countries receiving migrant children. This study revealed the following aspects:

- The *disappearance* of children from institutions is not a marginal or rare phenomenon: it is variable but it deals with a significant percentage of a given population which can reach **50%** in some cases
- It does not exist the publication of consolidated national statistics
- The different criteria at local and regional levels for taking minors into care and supporting them, the variety

of terms used (*disappearance, running away, departure without forwarding address, etc.*) make difficult to determine the scope and the seriousness of the phenomenon

- Some of people in charge of institutions consider the disappearance to be simply a minor's free choice
- The principle of actively searching for a foreign minor who has disappeared from an institution is rarely implemented, **in contrast to the immediate search which is initiated when a national child disappears.** This attitude could very easily be interpreted as **discrimination.**

The **main and significant problems faced by children** are related to the answers offered by the protection system and identification procedures which do not fit their needs. Hence, children prefer to leave the centre and go in search of better protection, in other area or another State. The work experience on this matter and the study carried out by Terre des Hommes have detected the following problems which are often the causes of the *disappearance*:

- **Refusal in the administrative procedures in order to regularizing children:** This discourages them and some prefer to leave the centre in order to seek protection and try to settle elsewhere
- **Lack of support by parents:** There is no parent with children who can support their future life plans and this could explain some minors' lack of motivation. Young people are often rejected by their family in case they do not find a work and this is one of the reasons for which they leave the centres
- **Repatriation policy:** Minors are afraid of being forced to return to their countries of origins
- **Pushing out policy:** In some countries, like Spain and Switzerland, various means are used to pressure minors into leaving the centres. The *disappearance* of minors can indeed sometimes be explained by the behaviour of some actors who, by several means, get it across to the child that they should leave the centre. This *pushing out policy* can sometimes also discourage the UFM's before even being taken into care.
- **Conflict of interest:** In some cases, like Spain, the centres obtain public funding. This leads to a lack of independence of the centre.
- **Incitement to disappear:** The term "*filter*" is illustrative of this kind of practice. It is often applied (for instance, in Switzerland and Spain) to encourage minors to disappear offering them one-way tickets in order to go to another community. This type of incitement is often used when UFM's asylum application has been refused and also applied by not issuing the official documents minors are entitled to by law, as the residency permit
- **Higher exposition to risks:** The *disappeared* minors are highly exposed at risks of abuse, trafficking and any form of violence and exploitation

**4. What concrete initiatives would you suggest to make justice systems child-friendly? Do you consider that the EU can contribute to these initiatives and if so how? How can the EU contribute to ensure that children's rights, in particular the respect of the best interests of the child, are effectively respected in judicial decisions that concern them?**

In order to ensure that children's rights are concretely respected the following measures and principles should be applied

and guaranteed:

- **Identification of UFM:** It is important to set up a system of effective protection for these particularly vulnerable minors, establishing their identity and finding them in case they leave the centres. It happens that some children who have disappeared from a centre turn up in another facility under a different identity. To avoid that a minor being counted multiple times in the same State, it is necessary to develop some technical tools to help better coordination among the States, with a strict legal framework and for the sole purpose of protection.

In case of total lack of identification documents and reliable information on the origins of a found UFM, a supplemental judgement process – in accordance with national legislation – must be launched, or any other procedure for the registration as a foreigner, in compliance with the provisions set out in *Artt. 7 and 8(2)* of the Convention of the Rights of the Child.

In no case a minor, turning up at the border of a State, should be deported or deprived of liberty for simple reasons of immigration. In addition, the UFM must be placed in safety, given access to health care and enabled to apply for asylum and residence permit, according to national laws.

- **Principle of precaution to take after a *disappearance*:** Following the *disappearance* of a minor, in most cases, no authority is able to say with any certainty where the young person is. More care should be taken in dealing with cases of disappeared minors. The judicial authority should initiate procedures to be able to respond with respect to the means of search in the (theoretical) case where a foreign family who would be entitled to request the authorities of host countries to recover their child over whom they still have parental authority, after learning that the child has been placed in an institution by the judicial authority of the host country and has since gone missing.
- **Recourse to legal remedies:** International, European and national legislations protecting minors need to be made more responsive. The judicial authority must ensure that in every stage of a procedure involving a minor, the minor has to be informed of the reasons of the decisions made and about his/her rights when applying for asylum and, in case of refusal, about the right of appeal and finally the right to submit an application for naturalization.

In the interest of the minors, the Court should also encourage the presence of third parties or even accept in some cases collective actions enabling associations or groups, not directly affected by the alleged violation, to speak on behalf of those who have not voice

- **Legal representation of minors must be clear and independent:** The child should be counselled by an independent legal representative who is not related to the State. The court should be alerted to conflicts of interest between minors and their legal representatives.

**5.. Are you aware of good practices, initiatives, programmes (including training programmes) or tools that contribute to enable judicial systems to take into account the specific rights, interests and needs of children? Are you aware of cross border initiatives in this area (e.g. cooperation with or participation to common projects, with organizations in other Member States, exchange of good practices, etc.)?**

As regards the *disappearance* of unaccompanied minors it is important to encourage cross border initiatives. An online database exists among three countries (Albania, Greece and Kosovo) in order to facilitate the management of

children considered at high risk of exploitation or trafficking. This *pilot* database is managed by Terre des Hommes and a national version has been created at the end of 2009 with the relevant authorities. The need for a cross border approach is reflected in the model of action TACT (Transnational Action against Child Trafficking) project<sup>9</sup> introduced between EU Member States and neighbouring countries.

This collaboration between countries of origin and host countries can be accomplished by means of an operational link initiated by NGOs (for immediate protective interventions). It can also be done through bilateral agreements, such as the agreement between Albania and Greece initiated by BKTF, the coalition of Albanian NGOs specialized in the fight against child trafficking and supported by Terre des Hommes.

**8. Do you consider that those working in justice systems are adequately trained to address the rights and needs of children in judicial proceedings and decision making? If not, can you identify and describe specific needs?**

Unfortunately, personnel working and dealing with children placed in institutions is not well trained to address the rights and needs of children

In general, the process for taking children into care is standard and does not take into consideration the personal minor's profile. The daily life in the institutions is, for example, not always adapted to those young people who have lived in the street or travelled, or are traumatized because of war, sexual abuse or other.

#### **A IV Children taking part in a criminal case as victims or witnesses for Court**

**4. What concrete initiatives would you suggest to make justice systems child-friendly? Do you consider that the EU can contribute to these initiatives and if so how? How can the EU contribute to ensure that children's rights, in particular the respect of the best interests of the child, are effectively respected in judicial decisions that concern them?**

During the process of a police investigation, it is important to design a participatory and practical step-by-step approach to investigating crimes against children. The police officers are fundamental for planning and coordinating their efforts with child care providers. So it is important to apply some guidelines addressed to police officers to better lead the investigative process with children. These guidelines should include the techniques to be used from when a police officer receives a complaint of alleged child abuse or exploitation to the preparation of Child Witnesses for Court.

In addition, judicial authorities must, in parallel with procedures for the protection of minors, prosecute the persons responsible for each step of the exploitation of the minors. Questioning them in the course of these investigations must avoid leading to the double victimization of the children and must convince them that the system guarantees

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<sup>9</sup> For further details on the "TACT" action model, please visit the Terre des Hommes Foundation's Child protection Project in Europe website: <http://tdh-childprotection.org/content/view/337/>

their security. Moreover, rules of international judicial cooperation should be identified and simplified in the framework of bilateral agreement between countries.

**8. Do you consider that those working in justice systems are adequately trained to address the rights and needs of children in judicial proceedings and decision making? If not, can you identify and describe specific needs?**

Personnel working in justice systems and dealing with children as victims or witnesses for Court is not adequately trained to address their rights and needs. There should be a **specific training to the hearing of children** indeed. The police and judicial personnel, as well the staff of institutions involved, must be trained to practice hearings of juvenile victims and witnesses: hearing on request, hearing alone or with a lawyer or a person of trust, with a certified interpreter with whom the children can speak their language.

Personnel working with children in justice systems as well as other institutions (schools, sports activities, etc.) should follow awareness and prevention trainings about the risks of violence, mistreatment and sexual abuse inside the institutions, both closed and non closed, with protection measures and complaining procedures.

It is strongly recommended staff training on prevention of violence, mistreatment and sexual abuse on minors in conflict with the law inside the detention centres and other closed or non closed institutions.

## **B. Vulnerable groups of children**

### **B I. General framework of vulnerable groups**

**14. In your experience, what are the groups of children in a situation of particular vulnerability? Do you have data and figures relating to these situations?**

- a. Traumatized children, child refugees and former child soldiers in particular
- b. Unaccompanied minor refugees
- c. Child refugees without secure residence status and aged 16-18
- d. Children without documents
- e. Poor children
- f. Street children
- g. Children who suffer from educational exclusion and lack of equity
- h. Children victims and/or at risk of exploitation, violence and trafficking
- i. Children in conflict with the law

\* As regards children belonging to vulnerable groups a,b,c,d,i and h see above (Section II, Child-friendly justice /A I, A II, A III and Section II, Violence against children/C I)

**15. What are the activities of your organization relating to vulnerable groups of children? What are the difficulties and problems that you encounter on the ground when developing actions in favour of vulnerable groups of children?**

**Activities:**

Project support in the mentioned subject areas, networking and lobbying

**General Problems:**

- Limited financial resources in order to implement adequate project initiatives
- Lack of political will
- Neither child rights in general nor the best interest of the child in particular are always regarded as policy priorities and legal premises
- Lack of well trained personnel at different levels

**16. Are you aware of good practices, initiatives or programmes that contribute to a better protection of the most vulnerable groups of children? Are you aware of cross border initiatives in this area (e.g. cooperation, or participation in common projects, with organizations in other Member States, exchanges of good practices, etc.)?**

- Single guardianship for unaccompanied minor refugees
- Mentoring projects with traumatised children
- Initiatives aimed at education and occupational training (qualification) for minor refugees and street children
- Pilot projects in the field of intercultural pedagogy (e.g. intercultural kindergartens, multicultural theatre projects, etc.)
- Standards and guidelines for practical purposes (see procedures for unaccompanied minor refugees, Terre des Hommes Germany)<sup>10</sup>
- Statement of good practice (Separated Children in Europe Programme)<sup>11</sup>

<sup>10</sup> Clearing procedures for unaccompanied minor refugees in Germany by Terre des Hommes, Bundesfachverband UMF and Pro Asylum, available at [http://tdh.info/xi\\_shop/index.php?page=product&info=31](http://tdh.info/xi_shop/index.php?page=product&info=31)

<sup>11</sup> <http://www.unhcr.org/refworld/pdfid/415450694.pdf>

*\* As regards good practices, initiatives or programmes that contribute to a better protection of children belonging to the vulnerable groups h and i,, see above (Section II, Violence against children/C-I and Section II, Child-friendly justice /A I)*

## **C Violence against children**

### **C I. Children victims and/or at risk of exploitation, violence and child trafficking**

**19. What are the activities of your organization relating to the protection of children from violence? What are the difficulties and problems that you encounter on the ground while implementing actions to fight violence against children?**

In many countries (above all in Eastern Europe) children suffer from various forms of violence. The number of children exploited in the streets, working, begging and at risks of various forms of abuse is high and situations in which children are made vulnerable to violence and exploitation are numerous. Some of these affecting factors include social and economic exclusion and discrimination of some groups, in particular ethnic minorities.

In Albania, for instance, despite progress in reducing the number of trafficked children across the borders, the number of children abused, exploited and trafficked within the country remains significant. Most of the children exploited through begging belong to Roma and Egyptian minority groups and the lack of birth registration expose them to a higher risk. The CRC makes birth registration a priority issue for child<sup>12</sup>. It is a crucial element in a child's life and an unalienable human right for everyone and establishes the linkage between the child and the state in order to recognize the child as citizen enforcing his/her rights. Therefore because of the lack of birth registration, there are many children who do not receive skilled medical assistance at birth, education, care, including legal protection. In many cases children are moved in institutions because of the lack of social welfare system. Most of them come from rural areas and are often from poor families, headed by one parent (due to death, divorce, emigration and imprisonment).

Despite various efforts undertaken by the Government of Albania to develop social protection and social welfare in the country, both the 2009 EU progress report<sup>13</sup> and the 2008 EC report on Social Inclusion and Social protection in Albania reported that the cooperation of different actors and the slow implementation of the decentralization process was also affecting the local capacity to deliver social services, to ensure social protection and social inclusion for all.

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<sup>12</sup> *Convention on the Rights of the Child, Art.7*

<sup>13</sup> *Albania 2009 Progress Report* . [http://ec.europa.eu/enlargement/pdf/key\\_documents/2009/al\\_rapport\\_2009\\_en.pdf](http://ec.europa.eu/enlargement/pdf/key_documents/2009/al_rapport_2009_en.pdf)

**20. Are you aware of good practices, initiatives or programmes that contribute to a better protection of children from violence? Are you aware of cross border initiatives in this area (e.g. cooperation, or participation in common projects, with organizations in other Member States, exchanges of good practices, etc.)?**

In Albania, Terre des Hommes, in support and collaboration with the BKTF (All together against Child Trafficking) coalition, provided support for the implementation of the “*Plan for zero tolerance to school drop-out*”, launched by the Ministry of Education and Sciences in 2009, and the “*National Action Plan for the Decade of Roma Inclusion 2010-2015*”. The latter indicated among the priorities the enhancement of capacities and improvement of the quality of services for the protection of Roma children through the strengthening of existing (and creation of) structures on child protection.

Terre des Hommes also provided for financial and technical support to 8 of the 15 **Child Protection Units (CPU)**<sup>14</sup> established in Albania as part of the **Child Protection Safety Net Project** with funding from the Austrian Development Cooperation, UNICEF, the Norwegian Ministry of Foreign Affairs, the Oak Foundation, the Swiss Agency for Development and Cooperation and Medicor Foundation.

The Child Protection Units (CPU) is a good example of child protection system. They have been established in 15 local government units. These CPU have already brought about measurable changes to the welfare of families and protection of children and represent a crucial initial step in developing a national child and family protection system in Albania. The CPU is a concrete operational model for child protection, implemented at local level. Embodied by a social worker trained on child protection, it is a structure of the Office for Economic Aid and Social Care and it aims at identifying and referring children at risk and/or victims of neglect, abuse, violence and exploitation through the management of individual care and protection plans coordinated by the Child Protection Worker in close collaboration with a multidisciplinary group of child protection stakeholders.

The CPU structure is both effective and essential to support the management of cases of children in need of protection. It facilitates the mobilization of the various stakeholders and ensures follow-up on the preventative and protective service delivery. It is a central element of the cross-sectorial child protection mechanisms and it demonstrated success of good governance in the decentralization of social services.

**21 What concrete initiatives would you suggest to better protect children from violence? Do you consider that the EU can contribute to these initiatives and if so how?**

As primary duty bearer, the State has the responsibility to ensure adequate protection of children and the establishment of an effective child protection system institutionalized within the state structure and integrated in the developing social protection and social welfare system.

An effective child protection system aims at preventing the incidence and reoccurrence of violence, exploitation, abuse and neglect of children through a comprehensive approach and coordinated responses. The system would include national policies and regulatory frameworks, government structures, professional bodies and networks but also services for prevention and assistance to victims.

Terre des Hommes would like to strongly encourage the European Union to consider social inclusion and social protection, through the development of a comprehensive and functional child protection system articulated around the establishment of local Child Protection Units, a priority and a main pillar for achieving social stability, needed to candidate for joining the European Union. The failure to invest adequately in the well-being of children from an early

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<sup>14</sup> For further details on Child Protection Unit in Albania, please visit the Terre des Hommes Foundation's Child Protection Project in Europe website <http://tdh-childprotection.org/projects/albania>

age has long-term implications for children and societies, including the severe violations of child rights, which can not be ignored by the EU. Solidarity is a hallmark of the EU. Building a more inclusive Europe is vital to achieve the EU's goals of sustained economic growth, more and better jobs and greater social cohesion<sup>15</sup>

Terre des Hommes defines a **Child Protection System** as “*A coherent set of actions and actors, in which the child is the starting point and which aims at guaranteeing the rights and well-being of the child by constructing synergies within and between protective environments*” also at local level.

In order to better promote and protect the rights of vulnerable children some specific recommendations should be taken into consideration:

- **To adopt a set of laws and strategies for the protection of children:** A framework law which clearly defines the roles and responsibilities of all main agencies and establish the legal basis for all necessary interventions, consulting a range of concerned stakeholders, including the various policy decision-makers but also civil society and children
- **To establish structures to deal with cases of child and family protection concerns:** To strengthen and extend the Child Protection System established at local level
- **To develop and enforce processes of coordination and collaboration:** It is essential to develop formal protocols of collaboration and referral mechanisms for early identification, appropriate care and support for children and families in need. Above all, it is **essential that all main actors are specifically trained**
- **To create and support proactive and responsive services:** It is recommended to develop a continuum of care, comprehensive and adapted to situations, ranging from general social work to highly intensive and specific interventions which should range from universal (targeting all children and families) to specific groups of children and families tailored to meet specific needs of particularly vulnerable people. Some services should include **social transfers**, namely cash transfers to vulnerable individuals and households and child allowance so as to reduce child poverty and vulnerability. **Access to basic services** including housing, health, education, legal assistance. **Social services**, namely family and community services, drop-in centres, alternative care, social welfare services including family support
- **To increase and allocate appropriate resources to ensure comprehensive social protection for children:** Investing both in qualified personnel and in quality services for children and their families which bring long-term benefits to society.
- **To promote social re(integration):** According to the UNCRC, States have an obligation to promote social re(integration) of any child victim of abuse and violence. For Terre des Hommes “**Re-integration**” refers to the process that takes place after the return of the child to his home, city or country (place of origin). It aims at ensuring that the child:
  - lives in a protective environment
  - has adequate access to his/her fundamental rights
  - further develops his or her level of choice (capacity to project him or herself in the future and choose)

TDH principles include<sup>16</sup>:

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<sup>15</sup> European Union. *A more cohesive society for a stronger Europe*: [http://ec.europa.eu/employment\\_social/spsi/poverty\\_social\\_exclusion\\_en.htm](http://ec.europa.eu/employment_social/spsi/poverty_social_exclusion_en.htm)

- TDH works in support of *Art. 39* of the UNCRC which states: “ *States Parties shall take all appropriate measures to promote physical and psychological recovery and social re(integration) of a child victim of any form of neglect, exploitation or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and re(integration) shall take place in an environment which fosters the health, self-respect and dignity of the child*”
- The **child is the main actor** in his/her own (re)integration. It is important to assist the child to establish his or her own life’s project and to realize it concretely, contributing to the preparation of the child entering the labour market. The family and community of the child are also important actors in the process of reintegration and working with them is critical to achieve success
- Reintegration activities must go beyond relief intervention and aim to a **sustainable livelihood** approach. Livelihood refers to the individual and social resources needed to conduct activities and acquire assets
- Child and his/her families have to be assisted in long-term solutions

**8. Do you consider that those working in justice systems are adequately trained to address the rights and needs of children in judicial proceedings and decision making? If not, can you identify and describe specific needs?**

In general staff dealing with children victims of any form of exploitation and violence is not well trained. Children in need of special protection are vulnerable and not capable to cope with challenges they have to face by themselves. Therefore particular attention must be given to the staff being hired in order to ensure that the best interests of the children will be served.

In order to ensure that, it is important to create and guarantee the existence of **Child Friendly Spaces (CFS)** and by doing so it is important that the staff is offered training courses that reflect the needs of the children in CFS, including training on child rights, first aid, child protection, the impact of armed conflict on children, psychosocial support, referral and how to undertake community awareness raising on child protection issues

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<sup>16</sup> See Terre des Hommes Policy Paper 2009, *Supporting Child (Re)Integration*: <http://tdh-childprotection.org/documents/supporting-child-reintegration>

### *SECTION III*

#### **III. Other questions**

#### **Child participation**

#### **29. Are you aware of good practices or initiatives relating to the participation of children in the development of policies that affect them?**

Terre des Hommes does not want to work for children but it wants to work together with them for a better world. Children are interested in knowing their rights and the policy that affects them.

In order to apply and ensure effective child participation, Terre des Hommes Germany, for example, has set up Children Rights Teams, specific groups made by children (40 teams with over 350 children all over Germany) which promote the active and responsible participation of children on the issues which affect them. Children are informed and are aware of the violations of child rights and commit to fight against them through several initiatives such as theatre performances, information desks, awareness campaigns, fundraising for projects aimed at children. A special group of children is supported by professional staff from the TDH executive office. It decides on collective gatherings, distribution of information material as well as the content of a child-friendly webpage. From the age of 14 (in exceptional case even before) children have the opportunity to become a member of Terre des Hommes Germany and they are able to vote equally on future policies of the organization.

Children want to participate in matters that affect them. Children from the age of 12 should have their institutional place in the political arena. They should have some representative groups (4 members minimum) to be able to represent their views. They furthermore need an adult aid who breaks down the respective content into child-friendly language.

The experience within TDH Germany has revealed that children represent passionately their views on these matters. Children are not interested in the process of participation as such, they want to be heard about topics that affect them. Therefore participation should not be viewed as an additional element to be added to the policy cycle, it is integral to all stages of the cycle and has to play a role across all policy sectors.

The experience of TDH Germany has also revealed that children find their ways to be heard when they are allowed to be part of the system. It is fundamental to keep political channels open to them and take them seriously into consideration.

#### **30. How would you improve child participation in relation to the EU Strategy on the Rights of the Child?**

The participation of children, especially in matters that address and affect them, should be a priority for the future EU Strategy on Child Rights 2011-2014 and it is compliant to the spirit of the Communication 2006. Nevertheless some significant shortfalls as to that have to be outlined.

There is a general lack of transparency indeed as to how the Commission aims at ensuring the effective participation of children according mechanisms of *“inclusion of children in all consultations and actions related to their rights and*

*needs*” (as stated in the Communication at para.4), and of a real cooperation with “*key stakeholders*”(par. 2). For instance, the EC held focus group discussion with 6 groups of children from all 27 EU member states but the information as to how, when and where these groups were formed and the selection criteria used has not been transparent and clear enough.

In addition, the decision of the Commission to launch and carry out the current public consultation process during the summer period when it is more difficult to ensure the participation of children because of summer holidays is not compliant with the content and the purpose of its Communication and the EU Strategy on CR.

Therefore, not only in order to improve child participation but to make it more concrete and effective we call up the EU:

- To enhance political dialogue and transparency with stakeholders dealing with children in taking decisions as to all actions and consultations related to rights and needs of children
- To promote and plan actions and consultations related to rights of children and involving them during more appropriate and well targeted periods of year in order to facilitate the work of stakeholders dealing with children and to ensure a real involvement (participation) of children in the processes
- To switch from an idea of “*formal*” (as stated at para.4 of the Communication) inclusion of children to a *substantial* and *concrete* one in all consultations and actions related to their rights and needs
- To adopt in its communications more clear and precise formulations being coherent with the global purpose of the future EU Strategy on CR
- To define concretely the meaning of child participation (in terms of actions, instruments, programmes, concrete conditions to promote children’s rights, etc.) that cannot be limited to a mere consultation.

# **| Terre des Hommes** International Federation

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