Defence for Children International
the worldwide movement for children's rights

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RECOMMENDATIONS ON THEMES RELATING TO CHILDREN'S RIGHTS
PRESENTED BY DEFENCE FOR CHILDREN INTERNATIONAL

1. JUVENILE JUSTICE AND DEPRIVATION OF LIBERTY	
Topic	A large amount of children (every human being under the age of eighteen years) are subject to custodial measures and are often denied their human rights.
Summary	• Non-custodial measures provided for by the Law on Juvenile Protection are under-utilised and DCI - Belgium has seen a consistent increase in the number of closed institution places being used to detain minors. • Places of deprivation of liberty are not sufficiently monitored and inspected, and complaint procedures accessible to children therein lack effectiveness and proper coordination. • Adequate support to children deprived of liberty requires further improvement, notably their human right to education and the promotion of the child's reintegration and assumption of a responsible role into society. • Judicial removal is still applied even if contrary to the United Nations Convention on the Rights of the Child (UNCRC); minors are often placed in custodial institutions and one-third of minors in Brussels who are subject to judicial removal spend time in adult prisons while awaiting transferral of the case procedures. • Police violence is mostly directed against the more vulnerable and/or migrant youths. • Professionals lack specific and regular training, particularly within the field of criminal justice. • There are no lawyers present during police interviews. • Isolation continues to be a measure frequently used in public youth welfare institutions (IPPJ).

Specific obligations according to international standards

- **Article 37, CRC:** Torture and deprivation of liberty
- **Article 40, CRC:** Administration of juvenile justice
- **Article 10, ICCPR:** Rights of persons deprived of liberty
- **Article 14, ICCPR**: Equality before courts and tribunals. Right to a fair hearing.
- **OPCAT**

RECOMMENDATIONS

- ✓ Drastically reduce the use of custodial sentences, which should only be used as a last resort and for the shortest period possible.
- ✓ Stop the detention of minors in adult prisons.
- ✓ Guarantee that children are no longer isolated *de facto*.
- ✓ Repeal judicial removal, which is contrary to the UNCRC.
- ✓ Ensure that children deprived of their liberty are placed in institutions close to their home and that all institutions of this type are accessible by public transport.

- ✓ Allocate the necessary human and financial resources to guarantee the right to a fair trial (in particular to effective legal defence) at all stages of the judicial proceedings.
- ✓ Improve the procedures and practices of children's judicial hearings, whether they are in conflict with the law, victims or witnesses.
- ✓ Eradicate police violence and the impunity of law enforcement officials.
- ✓ Ratify the OPCAT and set up an effective National Preventive Mechanism including a specific and adapted approach when minors are concerned.
- ✓ Reform the juvenile criminal justice system following the child-friendly justice approach.

2. UNACCOMPANIED FOREIGN MINORS ('UFM')	
Topic	These young people face three kinds of vulnerability: their minority (age), their foreign origin and the absence of a responsible adult guardian/caregiver. Often they do not benefit from special State protection and aid as provided for by the UNCRC.
Summary	The current state of Belgian law addressing UFM remains unsatisfactory: • UFM are medically identified by a threefold test which is not reliable and is performed despite the possession of identity documents on behalf of the minor. • UFM are accommodated in an observation and orientation centre only upon confirmation of their minority; during this time (sometimes several days), children are kept in closed institutions or placed in 'maisons de retour', an alternative to detention, where their freedom is restricted. Detention remains possible from a legal point of view. • A problem still persists regarding the capacity to accommodate foreign children: the places available are insufficient and the procedures to benefit from such places are cumbersome and ill-adapted. • UFM originating from a European country are generally excluded from the national reception system.

Specific obligations according to international standards

- **Article 2, CRC:** Non-discrimination
- **Article 22, CRC:** Refugee children
- **Article 20, CRC:** Protection for children deprived of their family environment
- **Article 37, CRC:** Torture and deprivation of liberty
- **Article 31, Convention relating to the status of refugees (1954):** Refugees unlawfully in the host country
- **Committee on the Rights of the Child,** General observation No. 6: Treatment of unaccompanied and separated children outside their country of origin (2005)

RECOMMENDATIONS

- ✓ Make substantial changes to UFM identification mechanisms and, above all, recognise the validity and legal value of identity documents in their possession.
- ✓ Provide special protection and assistance to all unaccompanied and separated children whether or not they have applied for asylum, and guarantee that all those who have submitted such an application are represented by a guardian throughout the entire procedure.
- ✓ Definitively prohibit the detention of children – whether they are unaccompanied minors or with their family – in closed centres, or any other facility that may be considered as a place of deprivation of

liberty, for migration-related reasons.

- ✓ Put in place alternatives to detention (non-custodial measures), notably by increasing the number of places to accommodate migrant children and families seeking asylum (European and non-European) and by facilitating the procedures to access them.
- ✓ Include families and unaccompanied minors of foreign origin (particularly those who have had their asylum application rejected) among the priority beneficiaries of the national strategy to combat poverty, notably by taking both emergency and long-term measures in order to provide them with suitable accommodation and services and thus reduce the probability of finding themselves on the streets.
- ✓ Implement the Government Declaration (March 2008) on the new procedure for determining the status of a stateless person, which enables the issuance of residence permits for stateless persons (children included), in compliance with the 1961 Convention on the Reduction of Statelessness.

3. MINORS BEGGING	
Topic	The practice of begging by parents and their children still persists and has increased due to the economic crisis and the refusal to grant social rights to migrant families from eastern Europe.
Summary	• The response of the State to this phenomenon has been mainly repressive with potential imprisonment of parents for sentences ranging from one to five years of time, and a fine of between 3,000 and 300,000 euros. • Several towns and villages have adopted police regulations that aim to combat begging through geographic and timing restrictions. • A socially inclusive approach would be more appropriate, notably by taking into account the interests of children and the respect of their human rights.

Specific obligations according to international standards

- **Article 3, CRC:** Best interests of the child
- **Article 5, CRC:** Direction and evolving capacities of the child
- **Article 9, CRC:** Separation from parents
- **Article 18, CRC:** Parent responsibilities
- **Article 19, CRC**: Protection against ill-treatment
- **Article 24, CRC:** Health and medical assistance
- **Article 27, CRC:** Standard of living
- **Article 28, CRC:** Education
- **Article 32, CRC:** Child labour
- **Article 36, CRC:** Other forms of exploitation
- **Article 39, CRC:** Recovery and reintegration

RECOMMENDATIONS

- ✓ Carry out an in-depth analysis of the complex determinants of poverty and child begging, their extent and impact, in order to develop a global strategy to combat these phenomena.
- ✓ Promote a socially inclusive rather than repressive approach, notably by providing socio-economic help to parents and by reinforcing the capacities of key actors such as street workers/mediators (who often have the same ethnic/geographic origin as these families and are able to establish genuine relationships based on trust) in order, amongst other things, to promote child education and combat and prevent abuse and neglect.
- ✓ Review the domestic legal system in order to prevent the placement of children in closed institutions and to provide them (families and children) with the necessary legal aid.

4. SEXUAL AND COMMERCIAL EXPLOITATION OF CHILDREN	
Topic	Belgian law concerning the sexual and commercial exploitation of children - which includes prostitution, child pornography and trafficking of children for sexual purposes - remains incomplete and actions undertaken to combat these issues are still too complex or absent.
Summary	Main concerns related to the definition, identification and protection of victims: • Victim status can only be established if the alleged victim participates and cooperates with the investigative services. It is inconceivable that victims should have to make a statement or lodge a complaint against the person responsible for the offence when they generally fear reprisals. • In the case of UFM, victims of trafficking are entitled to a residence permit for a limited 45 days, which can be extended to 3 months if they choose to cooperate with the police. This keeps the child in a precarious situation as their right of residence may be withdrawn if they retract their complaint, re-establish contact with the perpetrator or no longer respond to the authorities' requests for additional information.

Specific obligations according to international standards

- **Article 19, CRC:** Protection against ill-treatment
- **Article 24, CRC:** Health and medical assistance
- **Article 28, CRC:** Education
- **Article 32, CRC:** Child labour
- **Article 34, CRC:** Sexual exploitation
- **Article 35, CRC:** Sale, trafficking and abduction
- **Article 36, CRC:** Other forms of exploitation
- **Article 39, CRC:** Recovery and reintegration

RECOMMENDATIONS

- ✓ Adopt and implement new legislation that aims to effectively protect child victims of commercial and/or sexual exploitation, allowing them to receive unconditional aid and support, and ensure that their testimony/cooperation with the investigative services remains strictly optional and confidential.
- ✓ Improve victims' interviewing techniques, using audio-visual recording equipment (like in interviews of victims of other types of offences) to prevent victims from having to repeat themselves to the various parties involved (judges, lawyers, police, social workers).
- ✓ Create additional residential structures (reception and accommodation centres) for minors who are victims of exploitation and improve the capacities and skills of professionals working in such structures both to ensure that the specific needs of these children are adequately addressed and to reduce the risks of re-victimisation.
- ✓ Simplify the procedure for obtaining a residence permit for UFM in order to prevent the return of victims to environments where the risk of re-victimisation is exacerbated.
- ✓ Revise legislation to qualify sexual abuse as a violent crime, as recommended by the United Nations Committee on the Elimination of Discrimination against Women (CEDAW) in 2008.

5. RIGHT TO EDUCATION	
Topic	Unequal education in Wallonia-Brussels in spite of the existing legislative framework, and an extremely concerning school dropout rate.

Summary	• Social inequalities are replicated within the educational system through a bias selection of pupils. 1 in 2 children complete their education with at least one year of delay and 20% leave before completing secondary school. • Pupils from families of vulnerable groups (poor, foreign origin) often end up in educational programmes for those with special needs, rather than in the regular educational system. • School dropout tends to be penalised and young people failing to attend school may be reported to judicial authorities.

Specific obligations according to international standards

- **Article 28, CRC:** Education
- **Article 29, CRC:** Objectives of education

RECOMMENDATIONS

- ✓ Ensure access to education for all children, regardless of their socio-economic situation, origin or handicap, by renewing efforts concerning the implementation of the right to education as stipulated in the UNCRC.
- ✓ Step up efforts that aim to reduce educational disparities, especially by stopping the quasi-systematic placement of children of foreign origin and from poor families in special educational programmes.
- ✓ Refrain from taking repressive measures that penalise the most disadvantaged families and children and promote the development of coherent strategies that include the participation of teachers, parents and pupils in order to tackle the root causes of school drop-outs.