

THE ROLE AND THE IMPACT OF THE EU IN ADVANCING CHILDREN'S PROTECTION RIGHTS



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Seminar on European Responses to Violence
Liverpool University May 28, 2014

Introduction

Within Europe and around the world, children are at risk, and suffer from, violence, abuse, neglect and exploitation. Violence in many different forms. In many different settings.

The European Union plays a role in protecting children from violence, within Europe and outside of Europe.

And what we are going to look at this morning is: What does the EU actually do? Does the EU matter in this field? What impact can it have in the future?

First of all, many thanks to Liverpool University for the opportunity to be here today to explore this with you here this morning. Thanks to the project, and to EU funding, for allowing us to combine our different perspectives and I hope we can have some lively discussions.

There is a paper in your package which goes into some detail on the topic. And I don't want to be too technical this morning so I am going to break this down into three sections:

- the international legal and policy framework on violence against children: let's look at how it can inspire EU action and how EU action can contribute to it.
- Taking stock: let's see what the EU can do and what it has done so far. (I am going to look mainly at actions within the EU, rather than EU actions to protect children outside of the EU, but this area is also addressed in the paper.)
- And finally let's think about the challenges and opportunities that lie ahead for EU action.

And sometimes we think that's a question for people in Brussels to think about. But it's not. That's what all of us have to think about together and all of us can act on the opportunities together.

First of all, let's look at the legal framework:

There are a large number of international, regional and national instruments dealing with children's rights.

The main international instrument, where many of these rights are brought together, is the UN Convention on the Rights of the Child 1989 (CRC) and its Optional Protocols on the Sale of Children, Child Prostitution, and Child Pornography and the Optional Protocol on the Involvement of Children in Armed Conflict.

Article 19 of the UN CRC is the core provision which obliges States to prevent and respond to violence, abuse, exploitation and neglect affecting children (I am just going to call this "violence against children" from now on). However, children's rights to protection, however, are reflected in many other articles of the UNCRC. Just as some examples, there are specific articles on refugee children, economic exploitation of children, sexual abuse and exploitation, juvenile justice.

Preventing and responding to violence against children has been high on the international agenda in recent years.

In 2006, the UN Secretary-General undertook a Study on Violence against Children, involving wide range of stakeholders, including children themselves.

The study found that, in every part of the world, violence against children remains widespread, with some forms, to a large extent, legally and socially accepted.

It identified extreme forms of violence, including female genital mutilation (FGM), the worst forms of child labour and the impact of armed conflict.

But it also revealed that children routinely experience physical, sexual and psychological violence in all settings: at home, at school, within the community at large.

However, the Study also had some good news. It found that there is knowledge and capacity to address violence at international, regional and national level. It pointed to:

- a growing body of international and regional instruments,
- opportunities for children to speak out on violence and have their voices heard, &
- the expansion of research which reveals the impact of violence on children in the neurobiological, behavioural and social sciences
- the emerging recognition that preventing violence against children requires cooperation and collaboration among many partners.

The UN Study was followed by Authoritative Guidance on Strengthening Child Protection Systems.

In 2011, the UN Committee on the Rights of the Child presented its General Comment No.13 (2011) on the right of the child to freedom from all forms of violence (GC 13). (The UN Committee is a body of experts which amongst other things provides interpretative guidance on the Convention.)

It aims at a strong and systematic application of the UNCRC to address violence.

As background, around the world, approaches to addressing child protection concerns have traditionally focused on particular issues or specific groups of vulnerable children, such as sexual abuse, alternative care, children affected by armed conflict etc.

And this has contributed to responding to these specific concerns and increasing knowledge about how they should be addressed.

However, in recent years, there has been an increasing recognition that issue-focused based approaches to child protection are not the only solutions.

In fact, many children face multiple protection problems which require a more comprehensive response, involving different sectors.

As an example, a child may be fleeing a war in one country, may have been forced to transport drugs in order to be smuggled into Europe, may be exploited once in Europe and then may find themselves involved in criminal proceedings here as a result of that exploitation. At each stage, different laws or measures might apply to a particular aspect of the child's situation, depending on whether the child is seen as a refugee, a smuggled child, an exploited child, a child in conflict with the law. However, in reality, at each stage, all the individual circumstances of the child should be considered, and their rights to protection as a child, need to be the central concern.

But what does this involve? Put simply, it means making sure that the different measures and services work together to protect the child, and not just address a particular problem. So General Comment No 13 calls on States to ensure that a range of components work together to prevent and respond to violence:

- *laws* prohibiting violence against children,
- *national child protection strategies and plans* enabling actors to work together
- *services* preventing and responding to violence, with a *trained and committed workforce*.
- *social measures* which support individual children and their families or other care-givers.
- *educational measures* to address attitudes, traditions, customs and behavioural practices which condone and promote violence against children.
- Children's right to *participation*.
- *Data collection systems*, giving regular information which can inform law, policy and action.

And many actors describe this as a system approach – i.e. creating an integrated child protection system.

Who is responsible for creating a system?

Now both the UN Study and General Comment No 13 emphasise that, whilst States bear a primary responsibility, societies as a whole share the responsibility of condemning, preventing and responding violence against children.

The international community, regional actors, State parties and societies all have a shared responsibility to promote children's rights to protection and condemn violence.

And children themselves are recognised as important actors for change.

So what does this mean for the role of the EU?

First of all what can the EU do? And in the run up to the European elections in the last few weeks, we have heard a lot about EU competence.

- EU powers are clearly defined by the EU Treaties, with some areas being governed by EU action (for example, the customs union), some powers in some other areas being shared between the EU and its Member States (migration policy), some areas reserved for Member State actions (e.g. education, and with the EU sometimes contributing to enhance these actions)
- The EU has no general responsibility or powers as regards protecting children in Europe from violence. It is for Member States to establish general child protection systems. That is clear.
- However, certain specific EU policy areas clearly relate to protecting children from violence in specific settings. For example this is the case in the EU's actions combatting child sexual abuse and exploitation and trafficking. These are policies that are relatively new to the EU, and have been strengthened in recent years by the Lisbon Treaty and the European Charter of Fundamental Rights.

Let's pause for a moment. It's interesting isn't it? In the national media, we often hear scary stories about the EU causing migration problems. We don't always associate the EU with the important work of responding to migration problems, by protecting vulnerable children who are moving into or around Europe.

So the EU has a role. Let's turn to the next question: can EU measures really able to have an impact?

At first sight, we might have some concerns.

- a) At EU level, child protection issues typically arise in the context of other policy concerns such as migration or crime control. So will the child protection issues get enough attention?

For example, might EU measures concerning trafficking or sexual abuse focus more on the definition of criminal offences, prosecutorial responses or immigration concerns, rather than responding to the needs of children?

But much work has been done in recent years to focus attention on children's issues at EU level, including the adoption of an EU Agenda on the rights of the child. The sexual abuse directive in fact contains a lot of safeguards for children in abuse proceedings, how they can be interviewed, how they participate in court proceedings.

- b) Many EU laws contain general obligations leaving Member States discretion to identify the appropriate means for implementing them nationally. So how can you ensure that EU provisions really benefit children nationally?

First point is that, put very simply, many EU laws are directly enforceable, unlike many international laws which may need to be "activated" by national law. And EU Member States have to implement the EU rules in a way that will fulfil children rights. The Court of Justice will have a say in this.

Let's also consider some unique features of the EU role in protecting children.

- a) Having common EU rules itself provides a way to exchange experience, tools and funding throughout the region.

For example, regional EU tools can be developed to respond to common challenges for Member States:

- including guidance from the Fundamental Rights Agency on guardianship for unaccompanied children; or
 - training on interviewing asylum seeking children as provided by the European Asylum Support Agency.
- b) The EU also provides unique opportunities to take particular kinds of measures. As one example, the EU frequently represents the best means to establish enforceable transnational child protection mechanisms through cooperation between national border, police and child protection actors across borders.

Let's take the example of the EU rules which govern which country should hear the asylum claim of an individual. A child may have come into the EU on a boat from North Africa, arrive in Italy, make their way up to the Netherlands and claim asylum there. The child may have an aunt living in Sweden. So where should the child's claim be heard? What is in the child's best interest? And that is something that actors in Italy, Netherlands and Sweden together must explore. And EU rules provide the most direct means to establish clear ways to do this. National law alone could not resolve this issue.

Illustrations of EU Action – Achievements to date

Initially EU actions were certainly somewhat tentative, and less ambitious than they might have been. As we saw before, this is an area which is relatively new to the EU.

For example, in the first set of EU asylum rules adopted, safeguards for children were typically expressed only in general terms. The original EU law dealing with reception for asylum seekers stated that "the best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors". This contrasts significantly with the 2013 recast of the Reception Directive which contains a provision which specifies a range of factors to be taken into account when assessing the best interests of the child.

This is important because if you just talk about best interests, what does this mean? It can be a very subjective term – it has been called "a convenient cloak for bias, paternalism and capricious decision-making".

Instead by specifying factors to be considered, a decision maker should have to show that they have assessed the circumstances of the child and it makes it easier to review that assessment in an appeal.

So this experience of developing specific laws and policy at EU level has generated, and should continue to generate, a more confident and sophisticated approach to addressing these issues from the perspective of child rights, and, in particular, a child's right to protection.

So looking to the future, what can we see?

Very importantly, there is clearly a growing recognition at EU level of the role of child protection systems in protecting children from violence. The most recent Annual EU Forum on the Rights of the Child hosted by the European Commission was called: "Supporting child protection systems through the implementation of the EU Agenda for the rights of the child."

So the EU is concerned about violence against children and it is also exploring the best ways for it to reinforce the protective environment around children. The international framework has been a clear inspiration.

We have seen examples of the EU engaging on specific issues but can its actions reinforce national child protection systems more generally? In fact, there are many ways it supports the different elements of the national system. In the paper you have you will see examples of this both in terms of measures within Europe and outside.

The European Commission is currently working on a Communication on the EU role in supporting integrated child protection system which should help in ensuring the EU's activities are coherent and consolidated.

It provides an opportunity to bring the EU role and potential impact into focus. It should ensure political commitment to the issue at EU level and create momentum for efforts in the field.

And one of its main goals is to see how the EU, Member States and stakeholders can all work together.

- This should include consolidating exist EU measures and putting child protection at the heart of new initiatives.
- It should include exchange of practice and information between child protection actors regionally.
- It should include funding for European projects which allow us all to share and scale up good practices.
- It should include further developing transnational mechanisms involving cross border cooperation between child protection actors in the case of children who are of concern to more than one country.
- And the EU should take on the challenge of prevention in a more robust and effective way.

Clearly the challenges faced are long term.

Fighting violence against children demands effective and strategic use of collective strengths and resources across policy areas and actors.

The EU can play an important convening role within Europe so that we can deal with challenges together. And it can play an important role outside of Europe in championing the international law framework.

Thank you for your attention.