



Summary

Childhood and violence: the part played by public institutions

2019

All are equal before the law

Défenseur des droits

RÉPUBLIQUE FRANÇAISE

Editorial



The 2019 report on children's rights is of particular value to us.

This is because this year we are celebrating the thirtieth anniversary of the International Convention on the Rights of the Child

(ICRC), monitored by the Defender of Rights, an independent authority mandated by the Organic Law of 29 March 2011 to defend and promote the best interests and rights of the child. This milestone also provides an opportunity to take stock of the actual application of the ICRC in our country for all children.

As we come to the end of our mandates in 2020, this annual report is the last we will publish and as such marks six years of cumulative observations and analyses in the service of one objective: that children be fully recognised, from birth and without exception, as persons in their own right, subjects of their own rights, whose dignity and physical and psychological integrity must be absolutely respected.

We have chosen to address an essential right to the child's development – his or her right to be protected from all forms of violence, recognised in Article 19 of the ICRC, so that his or her fundamental need for safety is respected.

Concerned by the increase in referrals received on this matter, we have focused on violence against children in public institutions, whether direct or indirect, visible or invisible, as well as on the measures taken to prevent and stop it.

The Defender of Rights and the Children's Ombudsperson are at the heart of the interactions between children and the public authorities, and this issue of violence in institutions is at the intersection of their assigned areas of jurisdiction: relationship between users and public services, the fight against discrimination, the ethics of safety and the protection and orientation of whistleblowers, which underpin the defence of children's rights.

Our report shows that whenever the best interests of the child are not taken into account as a primary consideration, the result is an inadequate response to the violence he or she experiences, or even new forms of violence against him or her.

Indeed, thirty years after the adoption of the Convention by the United Nations, the culture of children's rights is struggling to sustainably take root, and the rationale of public institutions continues to take precedence too often over the attention and care to be given to children. Our role is to raise and nurture the awareness required.

"... do not trample, do not humiliate, let live without discouraging, rushing or pressing, respect for every minute that goes by. [...] A child's actions can be disciplined, not his or her ideas."

JANUS KORSCZAK

To make institutions receptive to the children's needs, "hospitable" to their rights and proactive in making these rights effective.

The 2,000 children we have consulted extensively this year regarding their perception of their rights and the progress to be made, have confirmed this: regardless of the context, they too often allude to a lack of consideration for them as individuals, their opinions and their dreams by the adults around them. Let us start by giving them the respect and recognition they deserve – the prerequisite to better combating the violence they suffer.

Janus Korczak wrote: *"do not trample, do not humiliate, let live without discouraging, rushing or pressing, respect for every minute that goes by. [...] A child's actions can be disciplined, not his or her ideas."*

We, Defender of Rights and Children's Ombudsperson, wish to show through this report that freedom is the right of all children, that their integrity and dignity must be respected and that their best interests must guide the behaviour of all institutions.

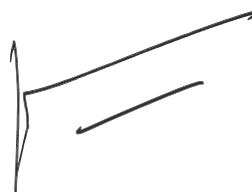
GENEVIÈVE AVENARD

Children's Ombudsperson,
Deputy to the Defender of Rights
responsible for the defence of children



JACQUES TOUBON

Defender of Rights





Introduction



T

he International Convention on the Rights of the Child imposes on States an obligation to protect children and therefore to combat violence against them in any place and any context. This obligation should be reflected in the development of actions both to prevent and treat violence.

However, the Defender of Rights regularly observes, in particular through the complaints it receives, that in public institutions whose mission is to receive and look after children, that actual acts of

violence, negligence and failings persist, compromising children's healthy development.

This is why it dedicates this report to the part played by public institutions in violence suffered by children.

Violence is given to mean any action or lack of action that contravenes a child's safety or healthy development, gives priority to the interests of the public institution over the interests of the child, causes them unnecessary physical or psychological suffering and/or hinders his or her subsequent development. The term institution is broadly understood as the educational, judicial, social, medical and medicosocial system that organises the reception, support and care of children. It refers to any service or establishment which has a public-service mission, including by delegation.

On the basis of two essential observations which show that not only is violence insufficiently taken into account within public institutions despite increased awareness, but also that public institutions themselves induce violence against the children they receive and look after, in particular by not sufficiently taking their best interests into account, the Defender of Rights concludes that it is necessary to develop the very organisation of public institutions to prevent violence against children.

Violence against children within public institutions is still insufficiently taken into account



Despite public policies to promote good treatment and combat abuse, sector enquires conducted within social and medicosocial institutions, within the national education system and on sexual violence suggest that children are still too often victims of acts of violence or bullying, perpetrated by professionals or by peers. However, quantitative and qualitative knowledge of these phenomena remains very fragmented and disparate, which is an obstacle to obtaining a global vision shared by actors and constitutes both a factor of normalisation and an obstacle to the development of appropriate responses.

Violence against children committed by professionals often continues to be normalised or played down. It is still too commonly accepted that mild, or more serious, violence against children can be justified by an educational objective of the persons exercising authority over them. It is therefore necessary to promote violence-free education in all institutions, by enshrining this principle in law, training professionals in violence management and educational restraint, and reminding officials that they must in all circumstances give priority protecting the child.

In terms of violence between children, it is not always detected or treated as it should be. The school system is struggling to identify and provide an appropriate response to situations of bullying, which affects one in ten pupils. Yet, such repeated verbal, physical or moral abuse and online bullying has particularly serious implications for the wellbeing and mental health of not only the victims but also the perpetrators and witnesses. Social and medicosocial institutions can also be places of peer violence, with several factors contributing to it. It is imperative that any act of violence gives rise to a fair assessment of the difficulties experienced and an appropriate response, involving first and foremost adjusting the child's educational support. The Defender of Rights considers that public institutions collectively caring for children should develop tools such as protocols for managing violent situations, providing for a clear procedure and graduated sanctions for each act of violence. These protocols should be developed upstream and brought to the attention of looked after children and adolescents.

Existing tools to ensure better protection of looked after children against all types of violence remain incomplete.

As such, judicial police files, whether bulletin no.2 of the criminal record or the Fichier judiciaire automatisé des auteurs d'infractions sexuelles ou violentes (FIJAISV – Automated Criminal Record of Perpetrators of Sexual or Violent Offences), are insufficiently consulted prior to the recruitment of professionals or volunteers to work with minors. The Defender of Rights considers that prior consultation of these records should be made mandatory. Similarly, the monitoring of establishments and services through evaluations or administrative controls does not currently offer the required guarantees of independence, impartiality and, due to the lack of standards, quality. In this area, greater involvement of State representatives in the *départements* would be invaluable.

The protection of children also requires the identification and prompt handling of infringements, negligence and malicious acts. At institutional level, it is unfortunate that the mechanism for reporting incidents in the management or organisation of medicosocial institutions is not used by regional health agencies as a basis for a prevention or continuous improvement policy. At an individual level, "reporting barriers" persist, despite provisions designed to facilitate, encourage or make it mandatory to report incidents. While employees who report issues in their institution are protected by law against any retaliatory measures, the jurisprudential interpretation of the concept of abuse is restrictive and the Labour Code only alludes to facts that can be qualified as crimes or offences.

The provisions protecting whistleblowers under the so-called "Sapin 2" law of 9 December 2016, go further. However, they require whistleblowers to follow a step-by-step procedure, which can be lengthy. Nevertheless, it is difficult to imagine leaving a child in an abusive situation for several weeks. It is now widely accepted, thanks in particular to neuroscience, that bullying, insults, humiliation, or other forms of physical or moral violence have implications for a child's development and future health. Such acts with regard to children in collective care facilities could be considered to fall under the so-called emergency procedure and justify dispensing with reporting to the hierarchical superior, to report directly to the judicial authority and potentially be made public, while benefiting from whistleblower protection.

The Defender of Rights also recommends encouraging reporting by improving the awareness of telephone platforms and providing them with sufficient means to answer all calls in real time, with extended opening hours. Finally, strengthening sexuality education for children and adolescents is essential to encourage reporting. Awareness of the occurrence of these abuses depends first and foremost on knowing what they are.

Violence induced by institutions themselves



Violence is not only the result of actions. It may be caused by the failure of a public institution to respond to the needs of the child, to respect his or her rights or to make his or her best interests a primary consideration. In these cases, the violence is indirect, less visible and less obvious.

The field of child protection is examined in this report by way of an example as it illustrates this phenomenon in several ways. Indeed, the need for emotional security is not yet enough of a primary consideration in looking after children in care in the face of institutional practices and organisational requirements. It is jeopardised when a child cannot maintain the ties he or she has established with his or her family or other adults or children around him or her. Similarly, long-term child protection care is often described as chaotic and does not always provide the child in care with the stability required to grow and develop fully, in good conditions, by building secure relationships and lasting attachments. The Defender of Rights recommends to the *départemental* councils that the plan for the child be effectively implemented as soon as possible, in order to identify the child's needs and the required responses. It hereby reminds the State of its responsibility, despite decentralisation, to protect children and encourages it to ensure that all basic rights and needs are met for each child in child protection care.

More generally, the inherent vulnerability of children is sometimes not, or not sufficiently, taken into account by public services. The violence of a parent's arrest in front of his or her child, or of a child's placement in a detention centre, is not given much consideration by staff, even though these situations can be a source of anxiety and depressive disorders and language and developmental disorders. Moreover, even though the negative impact of imprisonment on the development of adolescents is highlighted, an increasing number of minors continue to be incarcerated in conditions that, furthermore, do not always respect their fundamental rights. That is why child protection, and in particular specialised prevention, must be strengthened. Similarly, dedicating the resources required to respect children's rights to health, particularly mental health, and education will make it possible to effectively combat delinquency and the imprisonment of children.

As such, although specific rules and mechanisms are provided for, the concerns of adults and issues related to the functioning of institutions too often take precedence over the consideration of the age- and development-related needs of children and adolescents.

Children may be made more vulnerable, for example owing to traumatic events they may have experienced or the situation in which they find themselves.

Taking these vulnerabilities into account should be a primary consideration for public institutions in terms of addressing the situation of these children. This is not always the case, however. Unaccompanied minors, for example, whose journey of exile is synonymous with uprooting and often marked by violence, should have their isolated situation and minority systematically assessed by individuals trained in their cultures of origin, the characteristics of human trafficking and the psychological impact of post-traumatic stress situations, which is often not the case. Minor victims, who are particularly vulnerable and protected by many international and domestic laws, do not always receive sufficiently sympathetic treatment in criminal proceedings. Another example is children visiting their incarcerated parent, whose situation of vulnerability in which the prison context places them is not sufficiently taken into account. In the face of these vulnerabilities neglected by institutions, the Defender of Rights has made a number of recommendations on the assessment of unaccompanied minors, the care of minor victims in criminal proceedings, and the material conditions for the reception of children in prison facilities, all of which are aimed at better taking into account children's best interests.

Public institutions still often consider the child as an "object" of their intervention.

However, not being able to express your needs, desires or even opinion on matters that affect you can be a particular source of violence for a child. With regard to children's collective voice, progress has recently been made, in particular through the establishment of conseils de vie sociale (social welfare councils) and conseils de vie scolaire (school councils), but the issues submitted to them remain fragmented. It can be noted, for example, that children are not consulted during controls of social and medicosocial institutions. With regard to a child's individual voice, by way of example, decisions on educational assistance are sometimes taken without the child first being heard, despite the Civil Code stating that children who are capable of forming their own views should have the right to be heard. Many children express their discontent with decisions made without having being consulted or without feeling that their wishes, apprehension or the violence that these decisions may cause them have been taken into consideration. Generally speaking, the Defender of Rights considers it unfortunate that, as a minimum, a decision maker does not take the time required to receive the child, explain both the purpose and content of the decision taken and the reasons that led him or her to decide in this way. This would allow the child to understand that other interests may be at stake, that his or her view has actually been taken into account even if it did not take precedence over these other considerations, and that he or she thus feels less of an "object" of the measures taken concerning him or her.

The Defender of Rights also notes that public institutions sometimes experience difficulties in accommodating the specific characteristics of each child.



This may result in access constraints, refusal or even exclusion from certain activities or services that constitute discrimination. Some children with disabilities suffer this at school, particularly in terms of accessing extracurricular and leisure activities. As such, they may be denied access or excluded from certain activities on the grounds that the accommodation necessary for their reception would be excessive and disproportionate, even though their individual situation has not been objectively and concretely assessed. Foreign may also suffer discrimination - some may be subject to "racial profiling", denied access to schooling, or even receive "degraded" care.

Children whose appearance or behaviour breaks with traditional representations of femininity and masculinity are sometimes mocked or rejected, which can be considered forms of violence, not only at school, but potentially in all institutions. On the other hand, when differences are accepted, responses to children's needs are still too often generic and do not always result from an individual assessment of their needs. The example of children with disabilities is particularly enlightening: while the law of 11 February 2005 has given a real boost to their schooling in mainstream schools, the means implemented to assess and adapt to the individual needs of each child are not always sufficient. In some cases, "generic" schooling may constitute a form of abuse.

The necessary development of the very organisation of public institutions to prevent violence against children



The difficulties experienced by public institutions in stopping violence against children and the fact that they themselves indirectly induce violence by not taking children's best interests sufficiently into account, despite awareness and the considerable investment of many professionals, raises questions about the existence of structural causes, linked to the very organisation of public services.

Many situations of violence could be avoided if public services had the necessary means to carry out their tasks. The Defender of Rights considers that an assessment and fair allocation of the necessary resources are essential to reduce the time required to process requests and execute decisions, thus taking into account the fact that time is different to a child than it is to an adult, and that a delay in responding can lead to a danger or an obstacle to the child's healthy development. Today, processing times can be as long as seven months for cases submitted in certain *maisons départementales des personnes handicapées* (MDPH – Départemental Centres for Disabled People), five months for the minority assessment of unaccompanied minors, and ten months for an initial educational assistance hearing.

The timeframes set by law are not always met, as in the case of the notification of judicial decisions, which leads to delays in their execution or deprives the parties for months of their right to appeal. Delays in the execution of court decisions are often the result of insufficient provision of care in social or medicosocial institutions. Resources are also insufficiently allocated to child prevention and support services. As such, specialised prevention has experienced an unprecedented crisis, of which the State seems to have become aware, affirming that this must be placed at the heart of both child protection and the fight against poverty. The number of children monitored by a social worker is generally high, which compromises the quality of their support. In terms of child and adolescent health, Protection Maternelle et Infantile (PMI – Mother and Infant Protection) and school health services are facing major difficulties, while the supply of child psychiatry services is generally insufficient.

In addition to the lack of resources, institutional funding mechanisms can entail a risk of standardising reception and care conditions, distancing professionals from the personal relationship with children and not allowing them to adapt to the specific needs of each child.

A "managerial shift" is taking place which, under the guise of streamlining procedures or clarifying each individual's role, may hinder the consideration of the child's individual needs. This context may explain a feeling of loss of meaning, lack of recognition, burnout, and a loss of attractiveness of the profession among some professionals, leading to instability within teams. Local management is essential in maintaining informal interaction time, simplifying procedures, establishing times for analysis, and allowing the collective and evolving development of voluntary projects and service projects. The Defender of Rights considers that the wellbeing of children in care depends in part on the wellbeing of the professionals who support them. It is therefore paramount that these professionals be allowed to carry out their work in a coherent and caring environment, while ensuring that the best interests of the child are a primary consideration and promoting a supportive organisation and working environment.

Finally, the Defender of Rights often notices a lack of communication between services, to the detriment of the continuity of support and care for children. "Siloed" administrative organisation is at the root of inadequate care, which is a source of real violence against children. The interventions of the different services are still too often compartmentalised: each carries out its investigations without taking note of other services' reports and consultation times are not a priority, which sometimes has drastic implications.

Professional practices should be redesigned to make coordination a key element and combat mutual distrust between professions, through common tools: frameworks, information sharing procedures, operating protocols between partners and training courses combining different professions. Turning these silos into a network, under the impetus of the *départements* and the government, should make it possible to better meet the needs of certain children, who fall under several care systems and actors. As such, the implementation of "integrated systems" – such as the Institut Thérapeutique, Éducatif et Pédagogique (ITEP – Therapeutic Education and Teaching Institute) system –, multidisciplinary teams and institutions under the supervision of several bodies, are just some of the potential solutions for children with rare disabilities or adolescents in so-called "complex" situations because they have severe psychological and behavioural difficulties. The development of experimental, innovative, partnership-based projects aimed at responding to particular individual situations should also be promoted. However, these still too often face financial constraints that are far removed from the basic needs of children.



Recommendations



- **Improve knowledge of violence against children**

Recommendation 1

The Defender of Rights stresses the need for scientifically reliable and exploitable data on violence against children, which should serve as a basis for the definition and evaluation of public policies. It recommends that, in accordance with the recommendations of the Committee on the Rights of the Child, the public authorities create a national database on all cases of violence against children and the regular and multidisciplinary use of said database.

- **Ensure the respect of children's rights**

Recommendation 2

The Defender of Rights recommends that all corporal punishment or humiliating treatment of children be enshrined in the Education Code and Social Care and Family Code.

Recommendation 6

The Defender of Rights recommends that social and medicosocial institutions and services develop a protocol for managing situations of violence between children, establishing a clear procedure that respects the rights of the defence, and graduated sanctions for each act of violence. In this context, exclusion should only occur as a last resort, when, following consultation with the various stakeholders involved with the child, it is deemed impossible for the same organisation to continue supporting the him or her, and a new institution or service capable of taking care of him or her has been found.

Recommendation 10

The Defender of Rights recommends that the law should provide for the option for family welfare workers and childminders to receive a retirement pension without having to justify periods of time not working.

Recommendation 11

The Defender of Rights recommends to the *départemental* councils that the plan for the child be effectively implemented as soon as possible, in order to identify the child's needs and the required responses. It hereby reminds the State of its responsibility, despite decentralisation, to protect children and encourages it to ensure that all basic rights and needs are met for each child in child protection care.

Recommendation 13

Every child should be able to express him or herself on all matters affecting his or her daily environment, participate in their evaluation and reflect on how they could be improved. Initiatives to encourage children to express themselves and participate should be encouraged. The Defender of Rights recommends that each institution set up a system for collecting children's views and opinions, whether on an individual or collective basis.

Recommendation 14

The Defender of Rights recommends that judicial decisions, particularly in family matters, educational assistance and criminal matters, be explained to the child, in terms of their content and reasons, if necessary through a counsel, social worker or authorised association.

Recommendation 16

The Defender of Rights recommends that the public authorities, and in particular the Ministry of National Education, ensure that actions to combat stereotypes and raise awareness of living together are organised effectively and regularly in places taking in children.

- **Train professionals**

Recommendation 3

The Human Rights Defender recommends that the public authorities organise training for all professionals working with children on the management of critical situations and in particular on methods to prevent any use and escalation of violence. In particular, a training obligation should be introduced for all professionals working with children in difficult circumstances, such as places of deprivation of liberty.

Recommendation 4

The Defender of Rights recommends that the public authorities take all necessary measures to remind professionals under their authority that the use of force can only be a measure of last resort and require them to record in a register all events during which force has been used against a child, detailing the specific circumstances. These registers will serve as a basis for regular and collective retrospective analysis and the development of proposals to prevent these situations from happening again.

Recommendation 5

The Defender of Rights is particularly concerned by the extent of the phenomenon of school bullying and its consequences, which can be dramatic. It recommends that all school officials, academic ombudspersons, district inspectors and school doctors and nurses within the National Education system's *départemental* services be trained in the detection of school bullying and the use of measures to prevent and fight it, in particular cyberbullying.

Recommendation 15

The Defender of Rights recommends that the public authorities set up common training courses for all professionals working with children on children's rights, and develop and disseminate technical materials to identify the needs of the child and provide an appropriate response.

Recommendation 17

The Defender of Rights calls for the strengthening of initial and continuing training of National Education system professionals, with particular emphasis on the adaptation of professional practices to the particular needs of disabled pupils and by promoting exchanges of experience on the implementation of schooling adaptations and accommodation to meet the needs of disabled pupils.

- **Improve monitoring**

Recommendation 8

The Defender of Rights recommends improving the evaluation and monitoring of institutions and services looking after children. It stresses the need for a transparent, impartial system for evaluating and monitoring social and medicosocial institutions and services, based on a common reference system.

It recommends that each authority competent to authorise the social or medicosocial service or institution or to enable it to receive minors entrusted by a court decision, and in particular the prefecture, assume full responsibility for the monitoring and proper functioning of said service or institution and support it in a process of continuous improvement.

Recommendation 7

The Defender of Rights recommends that legislative reform be undertaken in order to make it mandatory to consult bulletin No. 2 of the national criminal record and the Fichier judiciaire automatisé des auteurs d'infractions sexuelles ou violentes (FIJAISV – Automated Criminal Record of Perpetrators of Sexual or Violent Offences) prior any recruitment of professionals or volunteers to work with minors.

- **Acquire the means necessary to ensure that existing systems are effective**

Recommendation 9

The Defender of Rights recommends that the public authorities provide the telephone platforms dedicated to combating violence against children, and in particular that of children in danger (119), with the means necessary to answer all the calls they receive, with extended opening hours.

Recommendation 12

The Defender of Rights recommends that the Minister of Justice, the Minister for Solidarity and Health, the Secretary of State and child protection work together to ensure the deployment of judicial paediatric medical units throughout the country and encourage their development in hospitals, in conjunction with paediatric services.

Recommendation 18

The Defender of Rights recommends that the State, in collaboration with the local public authorities, create a database of social and medicosocial institutions and services for children, specifying the looked after populations, means made available, intake capacities, and the contact procedure to be followed.

It recommends that the State ensure that the database is regularly updated and accessible to all professionals in the social and medicosocial sector.

Recommendation 19

The Defender of Rights recommends that the State and local authorities put in place tools to assess the resources necessary for the effective implementation of public policies for children, and ensure that the necessary funds are allocated in accordance with the results of this assessment.

Recommendation 20

The Defender of Rights recommends that every institution caring for children organise times to analyse duly financed practices.

Recommendation 21

The Defender of Rights urges the national and local public authorities to respect the legal framework established to prevent any situation of danger or to protect children, in particular by deploying all measures provided for by law. The State has a role to play in promoting and supporting the *départements* in the implementation of this framework, as well as in ensuring the involvement of the sovereign administrations at their side.

Recommendation 22

The Defender of Rights recommends the deployment of co-constructed and co-financed reception and care structures to provide a comprehensive response to the needs of certain children. To this end, integrated systems, allowing the decompartmentalisation of interventions, must be promoted and benefit from the impetus and adequate financial support of both State services and local public authorities.

—

Défenseur des droits

TSA 90716 - 75334 Paris Cedex 07

Tel.: +33 (0)9 69 39 00 00

www.defenseurdesdroits.fr

—

All our news

 www.defenseurdesdroits.fr 

