



European Network of Ombudspersons for Children

European Network of Ombudspersons for Children
Position Statement on “COVID-19: learning for the future”

Adopted by the ENOC 25th General Assembly, 29 September 2021

In the future all Emergency Measures in response to a public emergency which are likely to have an impact on children’s rights as guaranteed by the UN Convention on the Rights of the Child (CRC) should only be introduced where these are: necessary, proportionate, non-discriminatory and time limited. All Emergency Measures should be subject to review on an ongoing basis with the priority being to avoid or minimise any negative impact on children’s rights.

ENOC strongly recommends that the Committee on the Rights of the Child issue a General Comment on children’s rights in a public emergency to help ensure safeguards for children’s rights in the future.

ENOC also strongly recommends that all public authorities adopt a Children’s Rights Approach to the exercise of their functions at all times, including in times of public emergency, to ensure their decisions and actions are grounded in the CRC and uphold the rights of all children.¹

This ENOC Position Statement 2021 is informed by the research, ‘**Mapping the Impact of Emergency Measures introduced in Response to the Covid-19 Pandemic on Children’s Rights in ENOC Member States**’,² consultation with ENOC Members at the ENOC Spring Seminar and further online consultation with Members and informed by advice from the European Network of Young Advisors (ENYA). A report and recommendations concerning Covid-19 prepared by ENYA is available [here](#).

¹ For further information on the Children’s Rights Approach adopted in this Position Statement see: <https://childrenslegalcentre.wales/resources/> (accessed September 2021).

² <http://enoc.eu/wp-content/uploads/2021/10/Synthesis-Report-COVID-19-learning-for-the-future.pdf>

A CHILDREN'S RIGHTS APPROACH

ENOC has applied five interrelated principles of a Children's Rights Approach to analyse the findings from our research on Emergency Measures introduced by ENOC Member States in response to Covid-19; and, as a framework for our recommendations for action by government, public and other authorities, to help ensure that children's rights are respected, protected and fulfilled in any public emergency. The five principles are:

- **Embedding children's rights:** children's rights should inform all decisions and actions. Our research on Emergency Measures in response to Covid-19 in ENOC Member States raises serious concerns that children's rights were not prioritised when Emergency Measures were being developed/introduced, and that as a result children's rights were adversely affected. An issue of particular concern is that Emergency Measures have significantly diminished opportunities to identify children at risk of violence or abuse, or for children to access help and protection.
- **Equality and Non-discrimination to children:** children must be treated equally and should not be adversely discriminated against on any grounds, at any time. Our research reveals that children as a population and specific groups of children - in particular children with additional learning needs, disabled children, children with a mental illness, children with mild to moderate mental health problems, children in care, asylum seeking children or child refugees, children of divorced or separated parents, and children in the child justice system - were more likely to be adversely affected by Emergency Measures in response to Covid-19.
- **Empowering the child:** children should be supported to exercise all of their rights, including through the provision of information, resources and opportunities. Our research reveals that the introduction of Emergency Measures in response to Covid-19 (in particular the closure of schools and other education institutions) led to fewer opportunities for children to exercise their rights, in particular their education rights, freedom of association and assembly, and to engage in play and leisure activities.
- **Participation of children in decision making:** children's views must be heard and given due weight in any decision-making process that directly or indirectly affects them. Our research raises serious concerns about the general lack of



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consultation with children about Emergency Measures in response to Covid-19, and the absence of participation by children as Emergency Measures were being developed.

- **Accountability to children:** government, public authorities and private sector organisations should be accountable to children for any decisions and actions which affect their rights. Our research strongly indicates that Emergency Measures in response to Covid-19 have had a largely negative impact on children's rights. However, it also demonstrates that accountability mechanisms that exist in ENOC Member States are often inadequate to enable children (or those who represent them) to effectively challenge the introduction of Emergency Measures. The research also reveals that monitoring of children's rights violations is often inadequate, e.g. a lack of data on violence against children.

RECOMMENDATIONS

ENOC calls for international and European institutions, States, national, regional governments and local/municipal authorities and all other relevant authorities, and urges private sector bodies³, to adopt the following recommendations to ensure they respect, protect and fulfil children's rights in response to future public emergencies.

Embed children's rights

1. Embed children's rights in legislative, policy and budgetary decision-making, so that children's rights are given priority in decision-making at all times, including in times of public emergency.

- a. Ensure that decision-makers at all levels act in compliance with the CRC at all times, including in times of public emergency.
- b. Ensure that a **Child Rights Impact Assessment** (CRIA⁴) is applied to all policy, legislation and Emergency Measures to determine whether they will have any negative impact on children, and in particular, on any group of children who are already in situations of vulnerability or disadvantage.
- c. CRIA must be conducted as part of the process of developing policy, legislation, Emergency Measures, so that the assessment is properly taken into account by policy makers and not applied retrospectively to fit the already made decision.
- d. Ensure that a CRIA is conducted on any existing plans for public emergencies or develop and publish an advance plan setting out how government and other public authorities will take account of and ensure maximum compliance with the CRC in public emergencies.
- e. Identify key individuals and/or establish a team with direct and cross-cutting responsibility (e.g., an inter-ministerial group) to protect and promote children's rights and draw on external expertise e.g. Child Specialist Advisers such as Children's Ombudspersons, to inform decision making at all times, including in times of public emergency.

³ UN Committee on the Rights of the Child, *General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights**, CRC/C/GC/16 2013

⁴ See ENOC Common Frame of Reference for CRIA – A guide to carry out CRIA <http://enoc.eu/wp-content/uploads/2020/12/ENOC-Common-Framework-of-Reference-FV.pdf> accessed August 2021; See ENOC Position Statement 2020 on CRIA: <http://enoc.eu/wp-content/uploads/2020/11/ENOC-2020-Position-Statement-on-CRIA-FV-1.pdf> accessed August 2021

- f. Identify how resources will be safeguarded and allocated to the maximum extent possible to ensure children's rights are respected, protected and fulfilled in any public emergency.
- g. Ensure budget allocation is transparent and demonstrates the proportion of expenditure on children, at all times including in a public emergency.
- h. Ensure that the introduction of critical legislation that protects children's rights is not delayed, including in times of public emergency.
- i. Ensure that mitigation measures are in place so that education, social care, health care, civil and criminal justice, National Human Rights Institutions (NHRIs) and independent advocacy are available, acceptable, accessible and of good quality⁵ to children in times of public emergency.
- j. Ensure investment and training is provided to all professionals that work with children, to identify and protect children who may be experiencing violence.
- k. Ensure all Response/Recovery Strategies consider their impact (using CRIA and CRIE) on children and specific groups of children and their rights.
- l. Ensure investment in education, social care and health services (including mental health), and guarantee intersectoral support for all children and in particular vulnerable children, making sure all services are available, acceptable, accessible and of good quality during a public emergency.

Equality and non-discrimination

2. Ensure that decisions and actions at all levels do not adversely discriminate against children and/or specific groups of children at any time, including in times of public emergency.

- a. Introduce legislation and policy to prevent discrimination against children at any time.
- b. Require action to be taken, including the allocation of additional resources and special assistance to remove or mitigate any predicted discriminatory impact of any Emergency Measures on children and/or on groups of children.
- c. Establish robust mechanisms to gather data on the impact and experiences of children (including disaggregated data on different groups of children) in times of public emergency and ensure that relevant data (quantitative and qualitative) is available to inform the development of Emergency Measures.

⁵ See UN Committee on the Rights of the Child, *General comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health* CRC/C/15/2013 paras 113-116 for a full description of the Availability, Accessibility, Acceptability, Quality framework.



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- d. Ensure that available information about any public emergency does not discriminate against children, or groups of children, by presenting them as a 'problem' to be addressed by Emergency Measures.
- e. Ensure that any Public Inquiry (or other public examination) into the impact of a public emergency or Emergency Measures takes into account the impact on children and children's rights, including the reasons for any adverse discriminatory impact on children or groups of children.
- f. Where there are improvements in practice and service delivery in response to a public emergency, these should be retained and built upon, rather than reverting to the situation that existed before the public emergency.

Empower children

3. Enhance children's knowledge and understanding of their rights, through education and information so that children can exercise and take advantage of their rights, including in times of public emergency.

- a. Ensure that education curricula for children of all ages include education on human rights and children's rights, and mechanisms to claim and enforce rights, including how Children's Ombudspersons protect rights in particular jurisdictions.
- b. Take all reasonable steps to ensure that schools (and other education institutions) remain open and accessible to all children, and that any school closures are as a measure of absolute last resort and are reversed as soon as possible.
- c. Take all reasonable steps to ensure that spaces where children socialise and play remain open and accessible to all children, and that any closures are as a measure of absolute last resort and are reversed as soon as possible.
- d. Where schools (and other education institutions) are closed, provide uninterrupted substitute and high quality adapted education services (including therapeutic and support services) accessible to all children, including children with additional learning needs.
- e. Prioritise and support children from disadvantaged situations so that they have the knowledge, skills, equipment and infrastructure (e.g., broadband) to access and make

- effective and safe use of the digital environment (including raising awareness of the risks, e.g. cyber-bullying or sexual exploitation),⁶ including times of public emergency.
- f. Provide children with accessible, age-appropriate and reliable information (from a trusted source) about any public emergency, so that all children are able to make choices and exercise their rights.
 - g. Provide children with accessible and age-appropriate information on independent human rights institutions, advocacy services and professional legal advice, and ensure these services remain available to all children at all times.

Participation in decision-making

4. Ensure that children's views are heard and given due weight in any decision-making process that directly or indirectly affects them, so that their views are fully taken into account in times of public emergency.

- a. Introduce mechanisms⁷ to support children to meaningfully participate in the development of all policy and legislation, including Emergency Measures.
- b. Ensure Children's Ombudspersons can continue to act as independent champions for children, to speak out and advocate on their behalf during times of public emergency.
- c. Where physical meeting spaces are unavailable to children, establish safe 'virtual spaces' for children to discuss common concerns and issues during any public emergency.⁸
- d. Consult with children during and after a public emergency so that their experiences inform CRIA, CRIE and crisis response plans as well as national recovery strategies.
- e. Carry out regular assessment of children's participation across all functions and ensure that this is robust and available in times of public emergency.
- f. Establish mechanisms where children from different backgrounds can contribute their views and experiences to inform governmental responses to public emergencies.
- g. Allocate and identify resources in budgets to support children's meaningful participation in times of public emergency.

⁶ See ENOC Statement on Children's Rights in the Digital Environment <http://enoc.eu/wp-content/uploads/2019/10/ENOC-2019-Statement-on-Childrens-Rights-in-the-Digital-Environment.pdf> accessed August 2021

⁷For example, see Lundy's Participation Model: Lundy, L. 'Voice is not enough, conceptualising Article 12 of the United Nations Convention on the Rights of the Child', *British Educational Research Journal* (2007) 33/6, 937

⁸See ENOC Statement on Children's Rights in the Digital Environment <http://enoc.eu/wp-content/uploads/2019/10/ENOC-2019-Statement-on-Childrens-Rights-in-the-Digital-Environment.pdf> accessed August 2021



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Accountability

5. Ensure that government at all levels and public organisations are accountable for how they comply with children's rights at all times, including in times of public emergency.

- a. Carry out children's rights monitoring against children's rights indicators, and commit to children's rights benchmarks, including during times of public emergency.
- b. Publish regular reports on performance against children's rights indicators during times of public emergency and disseminate the findings.
- c. Encourage independent monitoring (e.g. by Children's Ombudspersons and children) including during times of public emergency.
- d. Ensure Children's Ombudspersons can continue to hold governments to account to respect, protect and fulfil children's rights in times of public emergency.
- e. Ensure all institutions where children (e.g. children in care, young offenders, asylum seekers and refugees, disabled children, children with complex mental health conditions etc.) reside are continuously monitored against children's rights indicators, especially during times of public emergency.
- f. Ensure that the family, as the environment for the growth and well-being of children, is afforded the necessary protection and assistance in a public emergency.
- g. Provide children with accessible and age-appropriate information on the process for making complaints, and ensure this process is accessible and child-friendly (and on the role of Children's Ombudspersons) to promote and protect rights, and that these remain available during times of public emergency.
- h. Provide children with accessible and age-appropriate information on the process for holding government and public authorities to account for violation of their rights, and how to obtain a remedy (where available) and ensure that these processes are child-friendly and accessible and remain available during times of public emergency.

APPENDIX - Summary of findings from the ENOC Synthesis Report *'Mapping the impact of Emergency Measures introduced in response to the COVID-19 pandemic on children's rights in ENOC Member States'*.⁹

The impact of Emergency Measures in general

- In jurisdictions where respondents received complaints from children and their representatives (91% of respondents) there was a significant increase in the number of complaints received during the pandemic.
- There have been a number of negative impacts on children's rights arising from Emergency Measures.
- The main areas of negative impact are: education rights; mental health; violence against children; the impact on children's right to play and children's right to an adequate standard of living and children's contact with their families.
- When Emergency Measures were introduced, governments in many (but not all) ENOC jurisdictions failed to take account of children's rights.
- There is evidence that governments learned lessons from the pandemic and are increasingly taking children's rights into account.

In a majority of jurisdictions Emergency Measures were identified as having had a negative impact on children's rights in relation to:

- Education.
- Play and leisure.
- Mental health.
- Physical health.
- An adequate standard of living.
- Violence against children.
- Discrimination against children.
- Civil rights and freedoms.
- General measures of implementation.

The impact of Emergency Measures: In thematic areas used for the purposes of State party reporting to the Committee on the Rights of the Child

General Measures of Implementation of the CRC (GMI):

- Emergency Measures have had a negative impact on the General Measures of Implementation.
- National planning and coordination of implementation of children's rights have been adversely affected by Emergency Measures.
- There has been a general lack of attention to children's rights as a guide to decision-making on Emergency Measures.
- Children or child specialist advisers have largely been excluded from decisions about Emergency Measures.
- Children already seen as 'vulnerable' are more likely to be severely affected or disproportionately discriminated against as a consequence of the impact of Emergency Measures on GMIs.
- Some governments have taken steps to effectively minimise the negative impact of Emergency Measures on GMI, including: the introduction of advice and phone lines targeted at children, Covid-19 Testing made available, an increase in support for education in the digital environment, and the allocation of additional funds to support children and their families in greatest need.
- Scrutiny by Children's Ombudspersons is often key to minimising the impact of Emergency Measures on GMI.

General Principles of the CRC:

- Emergency Measures have had a negative impact on the General Principles of the CRC.
- Many groups of children have been disproportionately affected by Emergency Measures, in particular, children with additional learning needs, disabled children, children with mental illness, children with mild to moderate mental health problems, children in care, asylum seekers and refugees, children of divorced or separated parents, and children in the child justice system.
- Children were not treated as a specific audience for the purposes of consultation, or the dissemination of information about the pandemic.
- Children have been treated as objects of the Emergency Measures rather than as participants in their making.

- The pandemic has highlighted inequalities between groups of children.
- The General Principles were not prioritised in the development of Emergency Measures, but this has improved as the pandemic has unfolded, including as a result of scrutiny and intervention by Children's Ombudspersons, Parliamentary Committees and Non-Governmental Organisations (NGOS)
- Some governments have taken steps to effectively minimise the negative impact of Emergency Measures on General Principles.

Civil Rights and Freedoms:

- Emergency Measures have had a negative impact on children's civil rights and freedoms, in particular on children's freedom of assembly, and the right to privacy and protection of image.
- Freedom of association and assembly has been restricted, as many children, at various stages of the pandemic were only able to meet online.
- There has been a disproportionate negative impact on children with additional learning needs and disabled children.
- Some institutions, such as care homes and juvenile offender institutions, have restricted children's movements during the pandemic, which in some instances is identified as a risk to children's mental health.
- A 'digital divide' means some children are unable to access the online space.
- For some children the move to online 'assembly' offers more opportunities to exercise the right to assembly.
- There is concern at the lack of regulations to safeguard children's privacy and information rights online.

Violence Against Children:

- Emergency Measures have had a negative impact on violence against children.
- There is significant concern that children are at an increased risk of experiencing domestic abuse, online abuse, general abuse and neglect, and sexual exploitation.
- Disabled children, children with additional learning needs and children in care are seen as becoming more vulnerable, with some children being at greater risk of abuse and/neglect.

- There is evidence that girls are at greater risk of increased violence or abuse.
- Data on violence against children is often inadequate, making it difficult to determine the actual impact of Emergency Measures.
- In many jurisdictions, governments struggled to maintain services to protect children who may be at significant risk of harm.
- Increased time spent at home means many children have been exposed to increased levels of violence without the sanctuary of school as an escape.
- Children's use of the internet while at home confinement means children have been exposed to an increased risk of cyberbullying or online sexual abuse/exploitation.
- Telephone helplines and online services were of crucial importance to give children the option to seek help where they are at risk of or experiencing abuse.
- Some jurisdictions continued services for those at risk of violence, for example keeping schools open to vulnerable children.

Family Environment and Alternative Care:

- Emergency Measures have had a negative impact on children's rights in relation to family environment and alternative care.
- Particular issues of concern are: reduced support for parents and childcare services; children being deprived of their family environment; children being separated from their parents; reduced contact with incarcerated parents; and, restrictions on family reunification.
- There has been a disproportionate negative impact on children in care, disabled children, and children with divorced or separated parents.
- Working parents across jurisdictions were left with no childcare options when schools were closed. Working parents had to care for their children, support online schooling and continue their working commitments, placing pressure on families and children, particularly those already vulnerable due to pre-existing disadvantage.
- Steps taken to support working families include financial aid, and in some jurisdictions, nurseries, kindergartens etc. were kept open to provide childcare: especially for parents working in essential services.
- Children in institutional or foster care had contact with family members and social work visits limited or in some instances terminated.

- Children were also reported to be unable to visit parents who were incarcerated.
- As the pandemic progressed, some governments took steps to ensure regular contact with family members, including facilitating contact via online services.
- Across many jurisdictions, children of divorced or separated parents at the start of the pandemic were not able to have contact with both parents.
- As the pandemic progressed, some governments made it clear that children must be able to have contact with both parents.

Health and Welfare:

- Emergency Measures have had a negative impact on children's rights in relation to the health and welfare of children.
- Particular issues of concern are: children's mental health; children's physical health, their ability to access mental health services and general health services; children's access to sexual health services; and, food security.
- There has been a disproportionate negative impact on disabled children, children with mild to moderate mental health problems, children with mental illness and children with additional learning needs.
- Child health services have been reduced, terminated or re-deployed in response to the pandemic.
- Children's mental health is of particular concern due to restrictions on movements, confinement to the home, not being in school and reduced opportunities to play and meet up with friends.
- Children's level of depression, anxiety and emotional distress was noted to have increased across many jurisdictions at a time when children most needed access to mental health services.
- The impact of the pandemic on the economy is seen as pushing many families into precarious financial situations with a resulting negative impact on children's standard of living and food security.
- Many jurisdictions changed legislation in support of a basic income, job retention schemes and moratorium on rent.
- Additionally, scrutiny by Children's Ombudspersons, phone helplines and online services as well as the allocation of additional funding were the main steps taken to attempt to reduce the negative impact.

Education, Play and Leisure:

- Emergency Measures, and in particular school closures, have had a negative impact on children's rights in relation to education, play, leisure and cultural life.
- There are concerns about reduced access to education at all levels: secondary education; primary education; early childhood education; vocational training; and higher education.
- There has been a disproportionate negative impact on children with additional learning needs, disabled children, children with mental illness, children with mild to moderate health problems and children in care.
- Although some jurisdictions switched to on-line learning, not all jurisdictions were prepared to do this effectively at the beginning of the pandemic.
- The 'digital divide' became increasingly apparent as the pandemic progressed, with many children unable to access online learning because of limited or no access to the internet or no access to technological devices.
- In a majority of jurisdictions, online services, allocation of additional funding and resources specifically targeted at vulnerable groups of children to respond to digital poverty were steps taken as well as interventions by Children's Ombudspersons.
- Some jurisdictions prioritised the re-opening of schools as soon as possible, while in other jurisdictions schools were kept open for vulnerable children.
- Restrictions on the use of indoor and outdoor space, and sports activities, as well as the limitations placed on opportunities to spend leisure time in out-of-school clubs, teams etc, have all adversely affected the right to play, leisure and recreation.
- There are concerns about the impact of limitations on the right to play etc on children's mental health and overall development.
- In some jurisdictions the reopening of playgrounds was prioritised, while in other jurisdictions, efforts were made to share play activities online and to distribute play resource packs or permitted children of certain ages to meet in groups to play.

Special Protection Measures of the CRC:

- Emergency Measures have had a negative impact on special protection measures.
- Particular issues of concern are: a negative impact on physical and psychological

recovery and social integration following abuse or trauma; the right to a fair trial; and deprivation of liberty.

- There has been a disproportionate negative impact on children in the child justice system and children with mental illness.
- There have been delays in court proceedings and a backlog in the child justice system in many jurisdictions.
- There are concerns that during the pandemic children denied their liberty are being kept in isolation and denied access to lawyers, and that deprivation of liberty is not seen as a last resort in some jurisdictions.
- Some jurisdictions have taken steps to ensure that children are only being remanded to custody as a last resort, or time spent in detention reduced.

Taking account of children's rights as Emergency Measures were developed

Child Rights Impact Assessment (or impact analysis) (CRIA) is recognised by the UN Committee on the Rights of the Child amongst the General Measures of Implementation for the CRC, in accordance with the provisions of Article 4. CRIA is a systematic assessment and communication of the likely impact of a proposal or measure on the rights of children and a mechanism through which to consider how children's rights are affected by the decisions and actions of governments, institutions, and others in the areas of law, policy, and practice. CRIA is therefore an opportunity to amend a proposal before it is implemented to mitigate or remove any adverse impact on children's rights.

- CRIA on Emergency Measures was carried out by a minority of governments.
- Where CRIA was carried out, this was mostly undertaken too late in the development of Emergency Measures.
- CRIAs on Emergency Measures were not informed by relevant quantitative or qualitative evidence and even where relevant evidence was available, this was not always taken into account.
- CRIAs on Emergency Measures did not involve children or young people.
- CRIAs on Emergency Measures were not properly resourced.
- There was evidence from some jurisdictions that CRIA contributed to positive change but not until later in the pandemic.