



MODULE 02: RIGHTS AND BEST INTERESTS

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SUPPORTED BY THE RIGHTS, EQUALITY
AND CITIZENSHIP (REC) PROGRAMME
OF THE EUROPEAN UNION



WHO IS A CHILD?

**Every human being under the age of 18
(unless majority is attained earlier)**

UN Convention on the Rights of the Child, Article 1

WHAT ARE THE CHILD'S RIGHTS?

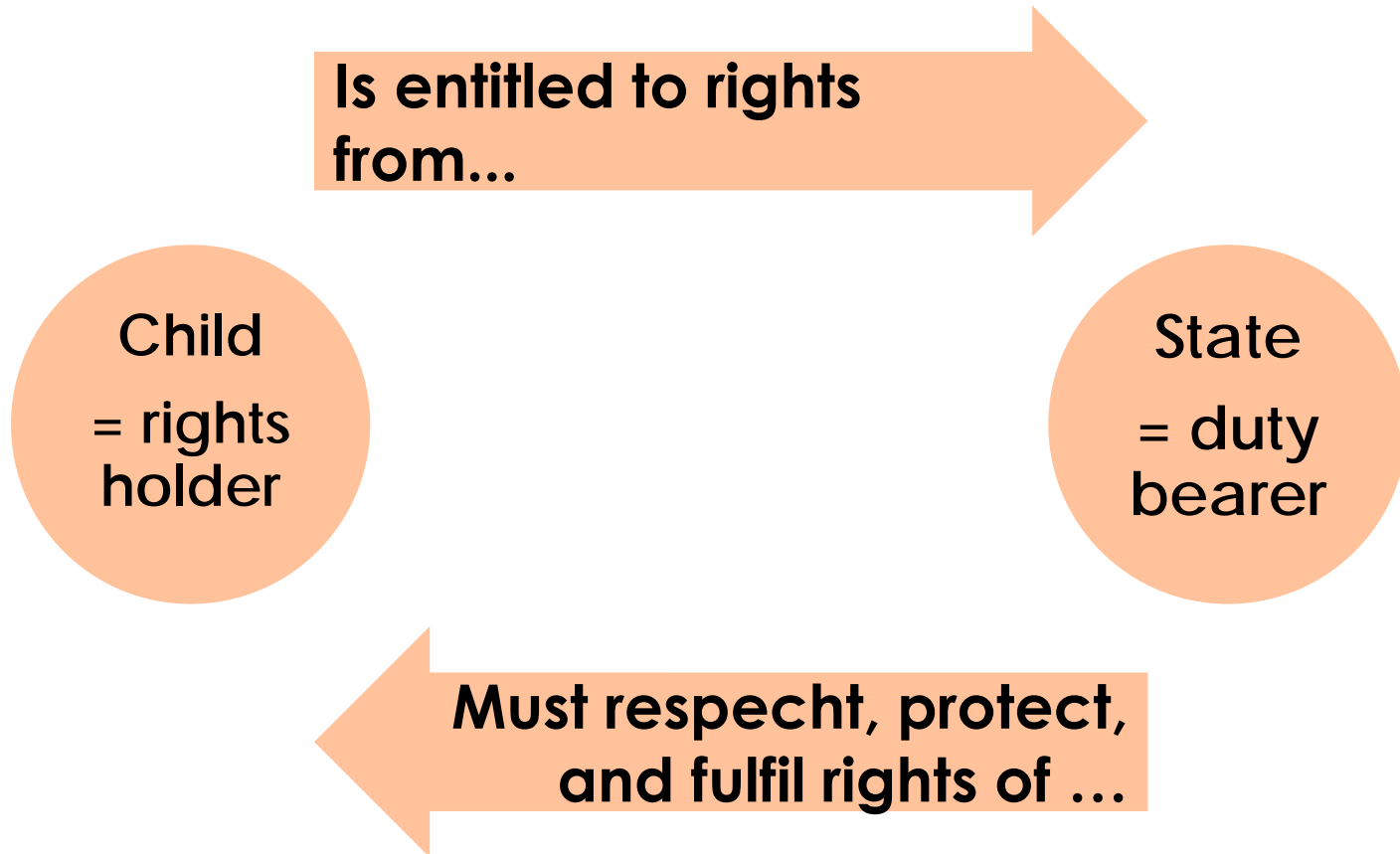
UN Convention on the Rights of the Child (1989)

A comprehensive set of core values and principles

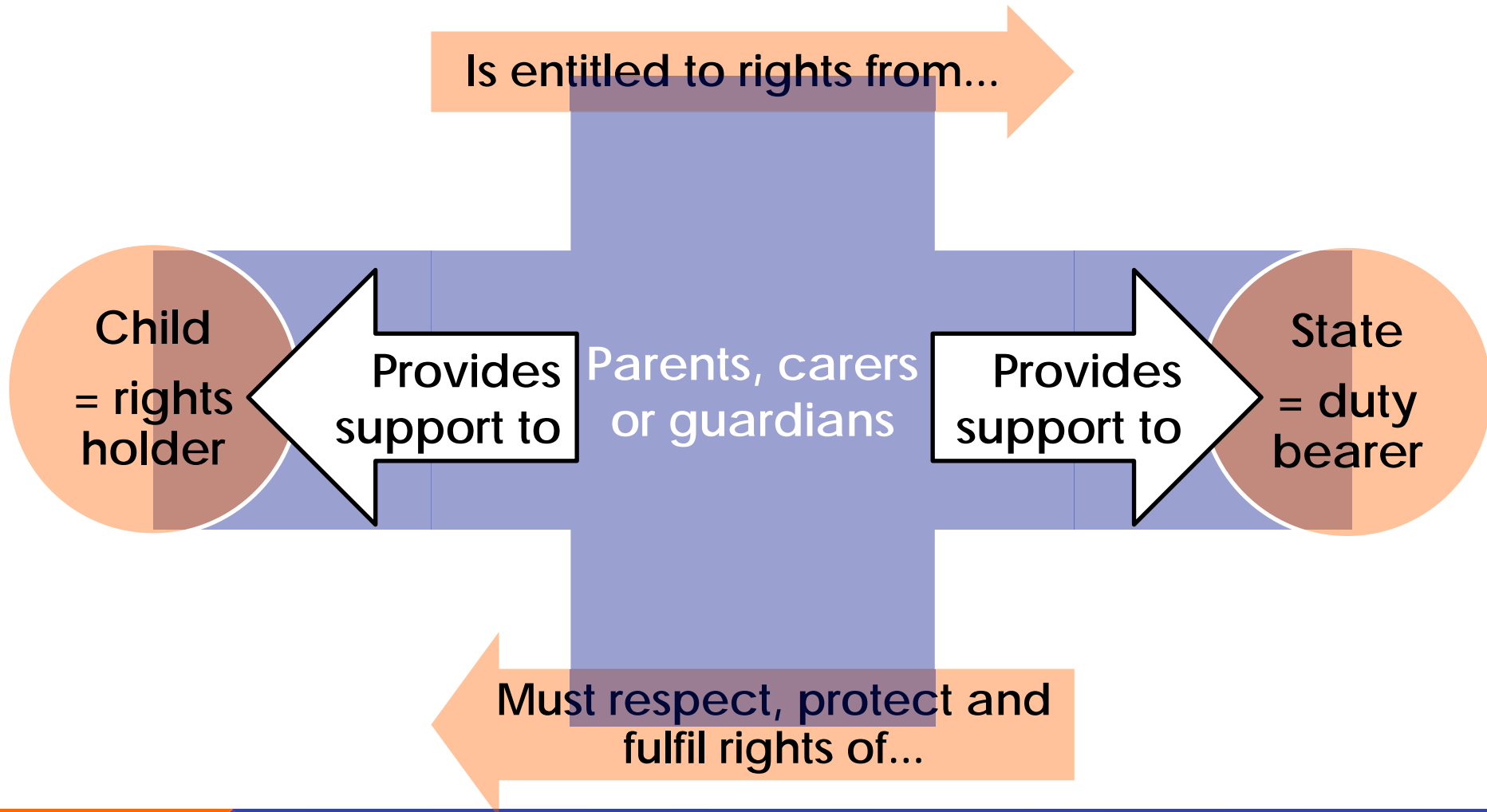
They are freedoms, standards, entitlements that all children are automatically entitled to

- ▶ Children are rights holders
- ▶ States are duty bearers

CHILDREN AS RIGHT HOLDERS



WHERE DO PARENTS, GUARDIANS AND CARERS FIT IN?



INTERNATIONAL CHILD RIGHTS – AN INTRODUCTION

Universal: International Bill of Rights

Specific: Convention on the Rights of the Child

- ▶ Full range of rights
- ▶ Most widely ratified instrument (including all States within the European Union)
- ▶ Implementation is monitored and guided by the United Nations Committee on the Rights of the Child
- ▶ Three Optional Protocols (children and armed conflict; sale of children, child prostitution and child pornography; communications procedure)

Third Optional Protocol on complaint mechanisms – professionals should take into account the right of the child to complaint

REGIONAL CHILD RIGHTS – AN INTRODUCTION

Universal: European Convention on Human Rights; Charter of Fundamental Rights of the European Union

Specific: Article 24 of the Charter of Fundamental Rights of the European Union

- ▶ EU Guidelines for the Promotion and Protection of the Rights of the Child (2007)
- ▶ Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (2010)

A Committee of Experts on the Council of Europe Strategy for the Rights of the Child was set up to develop the new Strategy for the Rights of the Child (2016-2021). The five priority areas are:

- ▶ Equal opportunities for all children;
- ▶ Participation of all children;
- ▶ A life free from violence for all children;
- ▶ Child-friendly justice for all children;
- ▶ Rights of the child in the digital environment

THE CONVENTION ON THE RIGHTS OF THE CHILD

The 3 Ps:

- ▶ **Protection:** The right to be protected against actions and behavior.
 - For example, the right to be protected from discrimination or exploitation.
- ▶ **Provision:** The right to access benefits, services, or activities.
 - For example, the right to receive an education,
 - the right to health and nutrition,
 - the right to an adequate standard of living.
- ▶ **Participation:** The right to engage in activities.
 - For example, the right to have views and to make these views known,
 - the right to participate and express an opinion relating to decisions affecting the child,
 - the right to enjoy freedom of expression.

THE CONVENTION ON THE RIGHTS OF THE CHILD THE UNDERPINNING PRINCIPLES

- ▶ The right to non-discrimination (Article 2)
- ▶ That the best interests of the child shall be a primary consideration in all matters affecting children (Article 3.1)
- ▶ The right to life, survival and development (Article 6)
- ▶ The right to be heard (Article 12)

OTHER RIGHTS IN THE CONVENTION ON THE RIGHTS OF THE CHILD

- ▶ Education
- ▶ Health
- ▶ Alternative care
- ▶ Privacy
- ▶ Religion
- ▶ Thought
- ▶ Expression
- ▶ Life
- ▶ Survival and development
- ▶ Best interests
- ▶ Non-discrimination
- ▶ Identity
- ▶ Participation
- ▶ Birth registration

UNDERPINNING PRINCIPLE: BEST INTERESTS OF THE CHILD

- ▶ Article 3.1 Convention on the Rights of the Child
- ▶ General Comment No. 14 on the best interests of the child
- ▶ The child's best interests must be a primary consideration in all matters affecting the child
- ▶ Broad, indirect and direct (group, targeted and individual)
- ▶ Requires assessment of specific circumstances
- ▶ A primary consideration (paramount in adoption)

BEST INTERESTS OF THE CHILD: CONSTITUENT PARTS

All actions concerning children:

- ▶ **Broadly**: anything that concerns a child or groups of children on a broad level
- ▶ **More directly**: decisions directly affecting children, such as education policies, infant or paediatric healthcare, etc.
- ▶ **Directly**: decisions about groups or individual children

BEST INTERESTS OF THE CHILD: CONSTITUENT PARTS

Best interests?

- ▶ Flexible to the **individual needs and rights** of an individual child, or be based on an assessment of the **needs and rights of group** of children.
- ▶ **Assessment** is necessary, to take into account:
 - the child's views;
 - the child's identity;
 - preservation of the family environment and preserving relationships;
 - care, safety and protection of the child;
 - situation of vulnerability;
 - the child's right to health and the child's right to education.(See General Comment 14 for more information)

“A primary consideration”

The “best interests” play a strong role in any decision making

UNDERPINNING PRINCIPLE: PARTICIPATION AND THE RIGHT TO BE HEARD

- ▶ Article 12 Convention on the Rights of the Child
- ▶ All children have a right to form and express views in all matters affecting them, including court proceedings
- ▶ Broad, indirect and direct (group, targeted and individual)
- ▶ Requires necessary support, actions and opportunities for meaningful participation

GENERAL COMMENT 13- THE RIGHT OF THE CHILD TO FREEDOM FROM ALL FORMS OF VIOLENCE

Article 19 states the following:

- “1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child. ”
- “2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.”

REFERENCES

- ▶ Coram Children's Legal Centre, Coram Voice, European Roma Rights Centre, Child Law Clinic, Family Child Youth Association (2016): Unlocking Children's Rights; Strengthening the capacity of professionals in the EU to fulfill the rights of vulnerable children
- ▶ UN Committee on the Rights of the Child (CRC) General comment No. 13 (2011): The right of the child to freedom from all forms of violence
<http://www.refworld.org/docid/4e6da4922.html>

COLOPHON

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