

CALL for Action

Protecting of the rights of refugee and migrant children arriving in Europe

PART I: INTRODUCTION

Refugee and migrant flows in Europe are at an unprecedented high – in 2015, more than a million people have made the treacherous journey to Europe across the Mediterranean Sea. The number of children among them has been on increase. For example, in Serbia, the percentage of refugee and migrant children registered increased from 27% in September to 35% in December 2015. Many of these children escape war and conflict back home and undertake a life threatening journey towards Europe. More than 200 have lost their life only in the East Mediterranean in 2015.

Once in Europe, their rights are further affected by the systems, policies and conditions in place. EU policy decisions and actions by all actors involved, including Member States and EU agencies have a profound impact on the lives and rights of refugee and migrant children.

In May 2015, the EU launched a European Agenda on Migration which lists 6 priority actions of response: joint operations to save lives at sea, reinforced anti-smuggling activities, a common approach on relocation and on resettlement, partnership with third countries and a new hotspot approach scaling up the operational support to EU Member States that are in the frontline of the current crisis, in particular Italy and Greece.

In October 2015, 59 leading organisations in the fields of human rights, child rights, health and social inclusion, including UNICEF, OHCHR and the European Network of Ombudspersons for Children, signed a Joint Open Letter to the European Council expressing their concern on the lack of attention afforded to children's rights in policy discussion on the EU response to the refugee and migrant crisis.

On the ground however, in Italy, Greece, other countries along the Western Balkan route as well as countries of final destination (i.e. Germany, Sweden, etc) many agencies, professionals and volunteers have played a crucial role in reaching out and assisting the refugee and migrant children. UNICEF would like first to acknowledge and pay tribute to the role played by these agencies, professionals and volunteers. Their work should be scaled up and transformed into policy and practice at European level. The EU and its Member States need to respect and implement a right based approach in their response.

It is the duty of all States **to protect and promote the rights of all children at all times**, wherever they are. States shall ensure that children in the context of migration are **treated first and foremost as children** and that the principle of the **child's best interests** takes precedence over migration management objectives. The **fundamental principle of family unity** needs to be guaranteed when in line with the best interests of the child. This principle has been constantly reaffirmed by human rights treaties as well as by regional courts of laws. It is not an abstract right, it has strong implications in terms of policy and operations to respond to the current refugee and migration crisis in Europe.

The Palermo meeting aims at discussing policy and practical measures by States, EU agencies and other stakeholders from a child rights perspective. States have legitimate interests in managing migration and the right to control borders. A good migration governance includes however respect for child rights. The best interests of the child as enshrined in the Convention on the Rights of the Child should be respected in all measures undertaken. The following Call, reminds States of the main rights at stake for refugee and migrant children arriving in Europe and offers practical ways forward, enabling States to guarantee these rights.

PART II: 10 Child Rights Priorities

Priority 1: Protection and care for children is ensured during rescue, interception, transport and transfer operations

Rescue, interception, transport and transfer operations need to acknowledge and respond to the needs of children, whether they arrive by land, sea or air. Child and gender specific measures must be in place at all stages including at the planning stage of the rescue operations.

For children and families in danger and seeking international protection, access to safe routes should be guaranteed, including through relocation schemes from neighbouring countries and humanitarian visa issued by embassies in countries of origin.

Action points include:

- Child safeguarding policies¹ are part of manuals on search and rescue operations and implemented during such operations
- Child rights and child protection training is provided to all staff involved in search and rescue operations
- Transport means respond to medical needs and vulnerabilities of persons to be transported (accessibility for young children, elderly, people with disabilities, sick people etc.)
- Queue management procedures and practices recognise the priority of vulnerable people (children, families with children, pregnant women, etc.)

Priority 2: No detention of children due to their migration status

Children should not be arrested and detained because of their migration status. Any kind of center established along the route, in the context of hotspot approach, as first reception center, or as accommodation center for migrant and refugee children pending return, should be an open center. In case the child is with his/her parents, the entire family should benefit from these alternatives.²

Any law enforcement intervention should be in conformity with the principles of legitimacy, necessity and proportionality, especially when children are involved.

¹ See on child safeguarding measures: http://www.keepingchildrensafe.org.uk/sites/default/files/resource-uploads/KCS_STANDARDS_2014.pdf

² See for more: UNICEF, UNHCR; Safe and Sound: What states can do to ensure respect for the best interests of the unaccompanied and separated children in Europe (hereinafter: Safe and Sound); 2014, available at: <http://www.unicef.org/protection/files/5423da264.pdf>. For alternatives to immigration detention, see International Detention Coalition; There are alternatives; 2015, available at: <http://idcoalition.org/publications/there-are-alternatives-revised-edition/>

Priority 3: The right to claim international protection

Every child who fears being persecuted has the right to claim international protection. The current hotspot approach should not limit the right of the child to claim asylum or other forms of international and humanitarian protection.

Children rights to claim international protection should not be dependent on the nationality of the child. Children experience particular forms and manifestations of persecution, including under/age recruitment, subjection to early marriage and female genital mutilation, which occur even in the so-called safe countries. Any application by a child for asylum, and/ or other forms of humanitarian protection, should be considered in its own merits and in an age and gender sensitive manner.

Any claim made by children should be processed with priority and through accelerated procedures which respect the best interests of the child and procedural safeguards. The right to appeal the decision should be guaranteed.

Priority 4: Reception centers comply with child protection minimum standards

We call States to explore possibilities for home/family and community based accommodation for refugees and migrants, with refugee and migrant children and their families prioritised for placements in such settings.

Should such accommodations not be available, any reception centre used, should meet children's needs in its design, functioning and equipment. Among others, there should be sufficient gender and age segregated safe spaces, gender segregated water sanitation and hygiene facilities, safety and security measures for children and women. Accessibility for children and parents with disability should also be anticipated.

The centers should ensure access to basic services for children and their families, including first medical aid, adequate food and non-food supply, mother and child safe spaces, child-friendly spaces and recreational activities for children, counselling, education etc., as well as referral to specialised services when needed (i.e. hospitalisation, specialised mental health care, etc).

Facilities receiving children, whether unaccompanied and separated or with their families, should have in place clear procedures of complaint/reporting for any child protection concern, and adequate follow up procedures. All centers should be independently monitored, including through consultations with children and adults refugees and migrants.

Action points include:

- Child rights standards are introduced and followed up in site construction/reconstruction planning
- A plan of daily activities is available for migrant and refugee children in the center, which corresponds to their age and facilitates access to rest, leisure, education, etc.
- Child and Family Support Hubs are part of centers along the main migratory routes in Europe

- Independent mechanisms of monitoring, including national human rights institutions and civil society are put in place and monitoring site visits take place regularly
- Referral and reporting mechanisms in place ensure children and adults feel safe to report inappropriate actions and behaviour

Priority 5: Professionals and volunteers in contact with children are sufficient in numbers and qualified

Staff in contact with children and their families should be trained adequately and provided with managerial support and supervision. It is essential that front-line workers have the relevant technical skills (i.e. child friendly interviewing techniques) but also the core soft skills needed (cultural awareness, sensitiveness, communication with children, etc.).

Use of staff speaking the native language of the child and cultural mediators in outreach work and service help building the trust and improve the level of services delivered. Codes of conduct should be mandatory for professionals and volunteers in contact with children as part of the general child safeguarding rules.

In case of an unaccompanied and separated child, the early appointment of a guardian should guarantee the protection of the best interests of the child as well as coordinate the protection and assistance the child receives.

Action points include:

- Adequate funding for centers is ensured, so that sufficient and qualified professionals are employed and child protection and child safeguarding policies are implemented;
- Resources available ensure that qualified, independent guardians are appointed as early as possible and that their workload allows them to effectively protect the best interests of the child;
- Child safeguarding policies are in place and apply to all agencies, including EU agencies such as FRONTEX and Europol and their staff is trained on them.

Priority 6: Non-separation and family reunification in line with the best interests of the child

From the moment a child enters Europe, until the child reaches the destination country, in all countries, and especially in border-crossing points, all possible measures should be undertaken to prevent the separation of the child from his/her parents.

For children accidentally separated from their parents while on the move, mechanisms should be put in place to ensure prompt family reunification. These children need immediate and accessible services providing them with communication channels and rapid family reunification. Verification mechanisms should be appropriate to circumstances and guarantee the best interests of the child.

Refugee and migrant children arriving in Europe should be given as soon as possible information about the right to family reunification and how to claim it within the EU. The principle of favourable conditions for refugees on the exercise of their right to family reunification, as recognised by EU Directive on Family Reunification, should not be put into question. EU and Member States should consider removing some existing restriction to the right to family reunification and broaden up the interpretation of family ties beyond the nuclear family.

Action Points:

- More staff and resources are needed to ensure procedures for family reunification are not too lengthy and respect the best interests of the child;

Priority 7: Screening, interviews and other processes are child-sensitive

All interviews with children should be carried out in a manner that is age, gender, culturally sensitive and, in the case of unaccompanied and separated children, overseen by the child's guardian. Such interviews should respect strict rules of confidentiality and privacy and include information on the aim of the interview and use of information received.

In case of doubt, a person claiming to be a child will be treated as such and benefit from all the protection measures granted to children. Age assessment should be done through non harmful techniques, in a holistic, multi/disciplinary and child friendly manner. It should take into account all elements available, including the person's own statement and other indications. Medical examination should be ordered only as a last resort and always be carried with the person's consent and in respect of his/her dignity³.

Action points include:

- Ensure that existing protocols (i.e. on child interviewing techniques, Safe and Sound, European Asylum Support Office Age Determination Handbook) are widely disseminated and included into internal regulations and procedures. Officials in charge are trained on them and their monitoring is included into the job description of their supervisors

Priority 8: Children should be protected against abuse, violence, exploitation and trafficking

All children, in particular unaccompanied and separated children should have access to services along the route, including legal advice and counselling on their specific situation and options. They should receive adequate information about potential risks and how/where to report and seek protection. We call for strengthened and harmonized cross-borders information sharing mechanisms to better protect children at risk on their journey.

³ See for more UNICEF, UNHCR; Safe and Sound, <http://www.unicef.org/protection/files/5423da264.pdf>, European Asylum Support Office; EASO Age Assessment practice in Europe, 2013, available at: <https://easo.europa.eu/wp-content/uploads/EASO-Age-assessment-practice-in-Europe.pdf>

Outreach social work should be undertaken for assisting and protecting children outside centers, accompanied by law enforcement measures to prevent and address cases when children fall victims of trafficking and exploitation.

Priority 9: Existing child protection systems should be enhanced

Existing child protection systems should be enhanced to ensure they take into account the situation of refugee and migrant children and provide services accessible to them on equal grounds with national children. They should respect the gender, culture and privacy of the child. Firewalls should exist between child protection systems and migration authorities, when required by the best interests of the child.

More data and information is needed about the situation of refugee and migrant children, their needs, and the risks they face. The development of specialized services and social policies should be guided by such data.

Priority 10: Durable solutions guided by a thorough determination of the best interests (BID) of the child

The best interests of the child should guide all decisions regarding children arriving in Europe, regardless of whether they apply for asylum or not. We recommend working with the child towards a durable solution as soon as possible to avoid the child remains in a situation of legal and psychological insecurity. The views and opinions of the child should be heard throughout the process.

No child should be returned without a thorough risk assessment, conducted by trained and independent child protection officers, a documented BID process and a support plan, should the BID conclude in favour of the child's return. Country of Origin Information reports need to specifically focus on the situation of children from a child rights perspective.

Reintegration support needs to be child-focused and take special account of child-specific needs such as reintegration at school, access to psycho-social support, social inclusion etc. Specific funds need to be invested in ensuring reintegration support is available and of quality. Regular monitoring should take place, including through independent child rights bodies and civil society.