

## POSITION ON REFUGEE CHILDREN

### BY THE EUROPEAN COUNCIL ON REFUGEES AND EXILES

#### GENERAL STATEMENT

1. The European Council on Refugees and Exiles (ECRE) is concerned with the protection and assistance of asylum seekers and refugees in Europe. Within this overall concern, ECRE aims to improve the protection and assistance of asylum seeking and refugee children. ECRE also aims to strengthen the international promotion of these children's rights (see below: The Definition of a "Refugee Child").
2. The ECRE position on refugee children is based on the 1989 UN Convention on the Rights of the Child and UNHCR's 1994 Guidelines on Refugee Children<sup>1</sup>. ECRE here intends to be more precise than these texts on procedural matters with regard to acquiring international protection in European host countries. The general principles in the UN Convention on the Rights of the Child stipulating the best interests of the child<sup>2</sup>, non-discrimination<sup>3</sup>, survival and development<sup>4</sup>, and participation<sup>5</sup> shall apply to all children.

#### *Respect for rights as both refugees and children*

3. ECRE maintains that refugee children have both the full rights of children and the full rights of refugees. In many instances, their rights as children will supersede their rights as asylum seekers or refugees. They have the same needs for care, education and special consideration as other children, in addition to their specific needs and rights as asylum seekers or refugees<sup>6</sup>.
4. The best interests of the child<sup>7</sup> principle should inform the entire determination procedure and is particularly crucial during the period immediately after the asylum determination. It should override all other considerations of a political or financial nature, and it requires that the developmental needs of the child should be at the forefront of the decision makers' minds.

#### *Status and non-discrimination*<sup>8</sup>

5. Children should be granted those rights described in the UN Convention on the Rights of the Child, whether they benefit from Refugee Convention<sup>9</sup> status or from national protection or temporary protection measures. Non-discrimination should be the guiding rule: a refugee child possesses the same social, economic, cultural, civil and political

rights as other children living within the host state's jurisdiction.

6. ECRE calls on states to respect the rights set forth in international human rights instruments in the case of each refugee child within their jurisdiction, without discrimination of any kind.
7. ECRE calls on each European state to refer specifically in their asylum legislation to the additional rights of both accompanied and unaccompanied refugee children, including child asylum seekers.

#### **DEFINITION OF A "REFUGEE CHILD"**

8. ECRE defines a child as every person below the age of 18. ECRE here refers to a "*refugee child*" as every child who is
  - seeking refugee status or other international protection<sup>10</sup>,
  - considered a refugee in accordance with applicable international or domestic law and procedures, whether unaccompanied or accompanied by his or her parents or by any other adult, or who is
  - forced to flee across an international border (as a result, for example, of war, civil war or generalised violence).

#### ***Age determination***

9. In determining age, ECRE believes that young asylum seekers should be given the benefit of the doubt. If an age assessment is necessary, for example when it is thought that travel documents have been falsified to present a child as an adult or an adult as a child, an independent medical examination by a paediatrician should be carried out. Such an age assessment should take into account the child's physical appearance and psychological maturity. However, medical testing should be handled with the utmost care, with due consideration given to the scientific limitations. Any medical testing which is forcible and/or violates the physical or cultural integrity of the individual should be ruled out.
10. ECRE suggests to European states that each state should establish a register of independent paediatricians whose "balance of probabilities" assessments with regard to both physical and psychological age will be taken in good faith. In determining psychological age, paediatricians should use a knowledge of countries of origin, relevant cultural factors and refugee issues.

#### **UNACCOMPANIED REFUGEE CHILDREN**

11. Unaccompanied children are those who are separated from both parents and are not being cared for by an adult who, by law or custom, has responsibility to do so.

ECRE maintains that unaccompanied refugee children should receive particular protection and care. Since they are separated from their parents and community they are particularly at risk and in a vulnerable situation. ECRE therefore calls on states to develop policies which take account of the special needs of unaccompanied children, both within the asylum procedure and in the provision of suitable care.

12. Children who arrive without an accompanying adult, but who do have family members in

the host state, should be reunited with those family members as soon as possible. Unaccompanied siblings should never be separated by the reception system of the host state.

13. Unaccompanied children possess all the rights of refugee children, as well as those specific rights that are highlighted in the following recommendations.

## **THE RIGHTS OF ALL REFUGEE CHILDREN**

### ***Access to the territory***

14. European host states should give refugee children immediate access to their territory.

An independent body should be appointed to guarantee that *unaccompanied children* are admitted to the receiving state under conditions of safety and effectively protected against refoulement.

All border officials should be trained in how to treat *unaccompanied children* and should inform the central competent authorities immediately of any unaccompanied child at the border.

15. An *unaccompanied child* seeking protection should
- never be returned at the point of entry,
  - never be detained at the point of entry<sup>11</sup>,
  - never be subject to detailed interviews by immigration authorities at the point of entry, nor prior to the provision of a guardian and legal representative (see paragraphs 16-18 and 24).

### ***Guardianship***

16. One of the most important ways to ensure that an *unaccompanied child's* best interests are defended is through the appointment of a guardian who nominates or assumes parental responsibility in the absence of the natural parents. The guardian's task is to ensure that decisions, both on status determination and the future, will be in the child's best interests. They must consult with the child so that the child's views are taken into account by the decision-making authorities.
17. Guardians, whether individuals or the staff of an appropriate institution, should be carefully selected, trained and supported in their work. They should be matched to take account of the child's racial, cultural, religious or linguistic background. In addition to child welfare expertise, guardians should have some knowledge of refugee law and an understanding of the situation in the child's country of origin.
18. ECRE therefore maintains that each *unaccompanied child* should
- be provided rapidly with a guardian who will work closely with the legal representative referred to in paragraph 24,
  - be provided at each point in the procedure with psycho-social support as appropriate.

### ***Accommodation***

19. Suitable accommodation facilities, responding to material, cultural, religious, linguistic and psychological needs in an age-appropriate way, should be provided by the host state for all *unaccompanied children*.

### ***Freedom from detention***<sup>12</sup>

20. ECRE maintains that *unaccompanied children* should never be detained. This includes detention at the border, for example in international zones, or any form of detention after the asylum claim has been rejected<sup>13</sup>.
21. Children together with their primary care-givers should not be detained. The single exception to this rule is when the state authorities can prove that the sole primary care-giver must be detained for reasons of national security or other such exceptional reasons and that detention is therefore the only means of maintaining family unity, in the best interests of the child. Such a situation should be extremely rare and occur for a very short period of time. Moreover, families including children must not be held in detention under prison-like conditions.

### ***The Determination Procedure***

#### *Access to the procedure*

22. ECRE maintains that *each unaccompanied child* should
- immediately be admitted to the full asylum procedure and adequate reception facilities,
  - be exempt from all accelerated procedures, including “safe third country” procedures.

#### *Right to apply for asylum*

23. A child may have grounds for seeking asylum in his/her own right and is entitled to an individual determination of his/her application. This is not only true for unaccompanied children, as above, but also for those children who, although with their families, may wish to lodge an application in their own right. The 1951 Refugee Convention does not discriminate in terms of age as to whether applications are admissible.

#### *Legal representation*

24. ECRE maintains that each refugee child<sup>14</sup> who is seeking international protection in their own right should
- be provided promptly with legal advice and representation throughout the determination procedure, including any appeals,
    - be provided, if necessary, with the means to obtain this legal representation,
    - if *unaccompanied*, automatically receive such representation at no cost to the child or those caring for the child,
  - be provided with interpreters trained in both refugee and child issues,
    - have the right to appeal against a negative decision to an independent judicial

authority.

### *Right to be heard*

25. The refugee child who is capable of forming his or her own views has the right to express these views freely in all matters affecting the child<sup>15</sup> – particularly the refugee determination procedure. These views should be taken into account and given due weight, in accordance with age and maturity.

26. ECRE maintains that all procedures and determinations which affect a refugee child should therefore be designed to allow the child to be heard. Any meeting for this purpose should take place in a child-appropriate way (ie. with breaks, non-threatening surroundings and the presence of the child's guardian or a trusted family member). The child may either be heard directly, or a guardian or legal representative may put forward the child's views.

27. Those who interview children and assess their claims should be appropriately trained, with additional knowledge of child development, the Convention on the Rights of the Child, and relevant cultural factors. Oral interviews with children should never be used for the primary purpose of finding discrepancies. If possible, provision should be made for an expert assessment of the child's ability to express a well-founded fear of persecution<sup>16</sup>.

### *Other procedural safeguards*

28. ECRE calls on states to adopt and implement administrative procedures which help assure the fair and efficient processing of asylum claims from children, as keeping children in an insecure situation for long periods of time can be extremely harmful.

29. Applications from, or involving, children should be given priority but the procedure itself should not be accelerated.

30. States should have a generous approach in the handling of cases where the child reaches the age of maturity during either the determination procedure or during the process of finding the best solution for the individual<sup>17</sup>.

31. Refugee children require thorough explanation of asylum processes and preparation for possible outcomes, in an age-appropriate manner.

### *Family tracing, contact and reunion*<sup>18</sup>

32. In tracing family members of refugee children and in taking steps to facilitate contact between refugee children and family members, ECRE calls on states to cooperate in efforts made by the UN and by other competent inter-governmental or non-governmental organizations which work with the UN. Particular reference is made to the ICRC and the role of its Central Tracing Agency. Applications by a child or his/her family for reunion should be dealt with in a positive, humane and expeditious manner<sup>19</sup>. Again, ECRE wishes to stress the importance of consultation with the child during this process.

33. ECRE emphasizes the need for investigation of a family's situation and ability to care for the child prior to family reunion. This should be carried out by an independent agency which has no vested interest in the outcome other than the welfare of the child.

34. States should take immediate steps to allow reunion of refugee children with family members who have already found protection or are otherwise resident in countries outside the region of origin.
35. ECRE specifically recommends that *unaccompanied children* seeking asylum in EU Member States should be immediately assisted with family tracing and reunion in other EU host countries. Family reunification in such cases can enable a family's application to be dealt with in one Member State rather than in several, which is both more efficient and more humane.

### ***Health care***

36. ECRE maintains that medical and psychological services should be available for refugee children at the same standard available to children of the host country<sup>20</sup>. In addition, there should be facilities for the treatment of illness and rehabilitation, staffed by medical practitioners who are aware of refugee health conditions.

### ***Education***<sup>21</sup>

37. ECRE believes that a refugee child has the same right to education as other children of the same age within the territory of the host state; this includes the period during which the asylum claim is examined. European host states should actively take steps to ensure that each refugee child's right to education is fully realized.
38. Schools need to be flexible and responsive to refugee children, and should provide the child with any necessary language or other support.
39. A child refugee should be able to benefit from additional education in his/her mother tongue in order to preserve cultural identity.

### ***Other social assistance***

40. ECRE calls on states actively to promote the physical and psychological recovery and the social integration of refugee children<sup>22</sup>.
41. ECRE believes that the provision of any other social assistance to refugee children should be based firmly upon their rights and needs as both refugees and children.

### ***Post-determination care***<sup>23</sup>

42. As a general rule, following a negative asylum determination, *an unaccompanied child* should not be returned from the host country to his/her country of origin, unless all the following conditions are satisfied
- it is determined, with the agreement of the child's guardian, to be in the best interests of the child that s/he should return,
  - parent/s or relative/s or another adult care-taker, or government child-care agency have agreed, and are assessed as being able, to provide immediate and long-term care upon arrival in the country of origin,
  - during the return the child is properly accompanied,

- after the return the situation of the child is effectively monitored by a designated NGO or international agency.

43. In *unaccompanied child* cases where the asylum application is rejected and the above conditions for return are not satisfied, states should ensure that a residence permit is granted on other grounds.

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**SUMMARY  
OF  
KEY RECOMMENDATIONS ON REFUGEE CHILDREN  
BY THE EUROPEAN COUNCIL ON REFUGEES AND EXILES (ECRE)**

1. Refugee children have the full rights of children and the full rights of refugees. This requires that each state should fully respect both the 1989 UN Convention on the Rights of the Child and the 1951 Convention relating to the Status of Refugees.
2. The “best interests of the child” principle should inform all procedures affecting the child.
3. Children’s asylum applications should be given priority but the asylum procedure itself should not be accelerated.
4. Each refugee child has the right to be heard in any procedure affecting the child. Those who interview children should be appropriately trained, and should have a knowledge of child development and relevant cultural factors.
5. A refugee child should have the same social, economic, cultural, civil and political rights as other children living within the host state. There should also be special provisions to meet the needs of refugee children, for example in the areas of education and health care.
6. An *unaccompanied refugee child* should never be returned to a third country. S/he should never be subject to a detailed interview at the point of entry.
7. Each *unaccompanied refugee child* should be provided promptly with a guardian who designates or provides full parental responsibility, and with all necessary psycho-social support throughout the asylum procedure.
8. Each *unaccompanied refugee child* should be provided rapidly with legal representation throughout the full asylum procedure, at no cost to the child or those caring for the child.
9. An *unaccompanied child*, as a general rule, should not be returned to his/her country of origin after his/her asylum claim has been rejected, unless it is in that child’s best interests and other necessary conditions are also guaranteed.
10. An *unaccompanied child* should never be detained, and detention of any refugee child should be avoided except in the most exceptional cases.

<sup>1</sup> UNHCR’s 1996 draft position paper on unaccompanied children has also been taken into account during the production of this paper.

<sup>2</sup> CRC Article 3.



<sup>3</sup> CRC Article 2.

<sup>4</sup> CRC Article 6.

<sup>5</sup> CRC Article 12.

<sup>6</sup> CRC Article 22 (1).

<sup>7</sup> CRC Article 3.

<sup>8</sup> CRC Article 2.

<sup>9</sup> 1951 Convention relating to the Status of Refugees and 1967 Protocol.

<sup>10</sup> The CRC Definition of a “refugee child”, Article 22, includes those seeking asylum.

<sup>11</sup> See also paragraphs 20-21.

<sup>12</sup> See ECRE Position on the Detention of Asylum Seekers, 1996.

<sup>13</sup> When an unaccompanied child arrives late at night and social welfare agencies can not be contacted until the morning, the child may need to be accommodated by the immigration authorities for the duration of that one night in a place which, according to national law, is defined strictly as a place of detention. This is one rare, technical exception to the rule stated here.

<sup>14</sup> In cases where fundamental differences of opinion or conflicts exist between siblings, each child requires individual legal representation.

<sup>15</sup> CRC Article 12.

<sup>16</sup> UNHCR’s Handbook on the 1951 Convention calls for “a liberal application of the benefit of the doubt” in child cases (para. 219).

<sup>17</sup> In particular, eliminating unnecessary delays which will extend the case until the age of maturity has been passed.

<sup>18</sup> CRC Articles 10 and 22.

<sup>19</sup> ECRE urges states to be flexible in their handling of family reunification cases where minors reach the age of majority during the determination period.

<sup>20</sup> CRC Article 24.

<sup>21</sup> CRC Articles 28, 29, 30 and 31.

<sup>22</sup> CRC Article 39.

<sup>23</sup> The European Commission Communication on Immigration and Asylum Policies, February 1994, stated: “Many Member States have developed guidelines on the extent that children below a certain age should not be returned, if there are no relatives or guardians that will take care of them. Other Member States, however, do regularly repatriate children, even without such guarantees. This therefore offers another area where the establishment of minimum standards would be desirable” (para.117).