

Refugee and Migrant

**CRISIS**  
IN EUROPEunicef 

© UNICEF/UN01277/GEORGIEV



# A home away from home for refugee and migrant children

The Convention on the Rights of the Child (CRC) recognizes the right of every child to a standard of living adequate to the child's physical, mental, spiritual, moral and social development. It also protects the child against exploitation, abuse and violence, regardless of the child's migration status. In 2015, more than 406.000 children claimed asylum in EU Member States plus Liechtenstein, Switzerland and Norway.<sup>1</sup> European law sets a number of living standards and entitlements that are relevant to refugee and migrant children in Europe.<sup>2</sup> However, in practice, children's entitlements continue to differ considerably depending on national legislation, its qualification of the status of the child (refugee or migrant, regular or irregular, unaccompanied, etc.), political will, and local resources.

Moreover, as Europe faces various challenges and pressure on migration management, there are ongoing discussions at State and EU level on reducing the existing reception conditions for refugee and migrants. UNICEF is concerned that lowering standards could threaten the protection and well-being of refugee and migrant children in Europe.

**UNICEF urges States to recall that a child is first and foremost a child and that all children—regardless of migration status—are entitled to the full set of rights as recognised in the Convention on the Rights of the Child (CRC).**

In fact, in order to fully comply with their obligations under the CRC, European States should further strengthen the entitlements foreseen in national legislation and make sure that they are properly implemented. Existing good practices should serve as a basis for harmonisation at EU level and throughout Europe.

UNICEF, in line with the CRC, calls for dignified living conditions for all children in Europe regardless of their migration status. At a minimum, these should include:

1. Alternatives to immigration detention for all children that respect the right to liberty and family life.
2. Adequate accommodation and access to basic services in the community for all children and their families.
3. Family-based solutions for unaccompanied and separated children.

## Alternatives to detention



© UNICEF/UN021997/GEORGIEV

Under international law, every child has the right to seek international protection from persecution, serious human rights violations, and other serious harm. Seeking asylum is not an unlawful act and asylum-seeking children should not be penalised for exercising this right. Furthermore, children should never be criminalised or subject to punitive measures because of their or their parents' migration status. The UN Committee on the Rights of the Child has made clear that "the detention of children because of their or their parents' migration status constitutes

<sup>1</sup> Eurostat data accessed in June 2016.

<sup>2</sup> Council of Europe Convention on Human Rights; European Social Charter; Directive 2013/33/EU of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (hereinafter the Reception Conditions Directive); Directive 2011/95/EU of the European Parliament and of the Council on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (hereinafter the Qualification Directive).

a child rights violation and always contravenes the principle of the best interests of the child.”<sup>3</sup> In its report on addressing large scale movements of refugees and migrants, the UN Secretary General calls for States’ commitment to never detain children for purposes of immigration control.<sup>4</sup>

There is solid evidence on the impact that detention has on children. Reports refer to high rates of suicide, self-harm and development problems. Even very short periods of detention can undermine the child’s psychological well-being and cognitive development. Children deprived of liberty are also at a higher risk of violence, abuse and ill-treatment.

Immigration detention of children has an impact on society too. It might profile asylum seekers and migrant children as criminals, thereby feeding exclusion and stigmatisation. It can also generate feelings of mistrust and injustice in the children concerned vis-à-vis their new environment and public authorities. Furthermore, detention facilities imply substantial costs and studies analysing various countries’ justice systems show that in general child detention is not cost-effective.<sup>5</sup>

In Europe, current EU and national laws still allow for immigration detention of children, though limited to a measure of last resort (i.e. after having established that other less coercive alternative measures cannot be applied effectively) and for the shortest period of time.<sup>6</sup> The grounds provided to justify immigration detention of children include the necessity to determine the identity of the person, to decide on the State responsible for the asylum claim (Dublin regulation), to verify elements of the application, to decide on the right to enter the State’s territory, protect national security or public order, or when the child is subject to a return procedure and the State fears absconding.

There is a high risk that in implementation, these grounds are broadly interpreted, against the best interests of the child. Whilst there is no case law by the Court of Justice of the European Union (CJEU) on immigration detention of children,<sup>7</sup> the European Court of Human Rights (ECtHR) has strictly interpreted the notion of *last resort measure*, concluding that authorities had actually failed in seeking alternatives to detention.

In *Kanagaratnam vs Belgium*, the Court ruled that despite the fact that the children were with their mother, “by placing them in a closed centre, the Belgian authorities had exposed them to feelings of anxiety and inferiority and, in full knowledge of the facts, risked compromising their development.”<sup>8</sup> In *Popov vs France*, the ECtHR considered that in spite of the fact that the children “were accompanied by their parents, and, even though the detention centre had a special wing for the accommodation of the families, the children’s particular situation was not examined and the authorities did not verify that the placement in administrative detention was a measure of last resort, for which no alternative was available.” The court also found that “the child’s extreme vulnerability is the decisive factor and [the child’s best interests] takes precedence over considerations relating to [migration] status”.<sup>9</sup>

Indeed when it is in the child’s best interests to keep the family together, the imperative requirement not to deprive the child of liberty extends to the child’s parents, or/and guardian and requires the authorities to choose alternative measures to detention for the entire family.<sup>10</sup> The United Nations Special Rapporteur on torture has also concluded that “immigration detention of children exceeds the requirement of necessity, becomes grossly disproportionate and may even constitute cruel, inhuman or degrading treatment of migrant children.”<sup>11</sup>

**UNICEF calls upon States to expeditiously and completely cease the detention of children on the basis of the child’s, his/her parents’ or guardians’ immigration status. Instead alternatives should be developed that fulfil the best interests of the child, along with the child’s rights to liberty and family life.**

As stated by the Committee on the Rights of the Child, ‘legislation, policy and practices should allow children to remain with family members and/or guardians if they are present in the transit and/or destination countries and be accommodated as a family in non-custodial, community-based contexts while their immigration status is being resolved.’<sup>12</sup> There are a range of alternatives to the immigration detention of children and their families. They vary from alternatives implying a certain restriction or obligation (e.g. regular reporting to the authorities, deposit of a financial guarantee, obligation to stay at an assigned residence, deposit of passport, etc.)<sup>13</sup> to various forms of accommodation without conditions or restrictions. When the alternatives restrict freedom of movement or place a certain obligation on the person, they should be provided for by law, serve a legitimate aim, and be proportional to this aim.

Several European States, in partnership also with UN Agencies and civil society, are already implementing alternatives, such as reporting obligations for families with children and foster care or independent living with supervision for unaccompanied and separated children. These practices demonstrate that it is possible to serve States migration management interests while respecting the rights of refugee and migrant children.<sup>14</sup>

## Adequate accommodation

“States are required to provide adequate accommodation to children in an irregular situation without resorting to detention.” This 2009 conclusion of the European Committee of Social Rights is based on the right to adequate housing, under article 31 of the European Social Charter.<sup>15</sup> The right to adequate housing is also recognised in international law as part of the right to an adequate standard of living. Although the right to housing is not an absolute right, it still translates into a number of concrete obligations for States that are relevant to the current situation of refugee and migrant children in Europe. Such obligations include preventing homelessness, addressing discrimination, protecting against forced eviction, ensuring security of tenure to all, and guaranteeing that housing standards are correct.<sup>16</sup>

3 Committee on the Rights of the Child; Report and Recommendations of the General Discussion Day 2012 on the Rights of all children affected by international migration (hereinafter CRC DGD 2012).

4 In Safety and Dignity, Addressing Large Movements of Refugee and Migrants, Report of the UN Secretary General, 2016.

5 Toolkit on Diversion and Alternatives to Detention, UNICEF, 2010.

6 Reception Directive, see supra note 2; Directive 2008/115/EC of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third-country nationals (hereinafter: the Return directive).

7 In June 2015, in case of an adult, CJEU ruled that the Return directive prevented imprisonment of a non-EU country national who has not been subjected to a return procedure solely because of illegal border crossing. C-47/15.

8 ECtHR, *Kanagaratnam and Others v. Belgium*, Applications no. 15297/09.

9 ECtHR, *Popov vs France*, Application Nos. 39472/07 and 39474/07.

10 See Inter-American Court of Human Rights, Advisory Opinion OC21/14, ‘Rights And Guarantees of Children in The Context of Migration and/or in Need of International Protection’, August 2014

11 Report of the Special Rapporteur on Torture and other cruel and inhuman or degrading treatment or punishment, A/HRC/28/68; see also UNHCR and UNICEF, *Save and Sound*, 2015.

12 CRC, DGD 2012, supra n 3.

13 See for example Fundamental Rights Agency, *Alternatives to detention for Asylum seekers and people in return procedures*, 2015.

14 See also IDC, *There are alternatives*, 2015 and UNHCR, UNICEF *Save and Sound*, supra no 7.

15 European Committee of Social Rights, *Defence for Children International (DCI) v The Netherlands*, Complain No. 47/2008.

16 OHCHR, UN Habitat, *The right to adequate housing*, Fact sheet No. 21.



EU law distinguishes three forms of housing for asylum-seekers: transit centres, accommodation centres and private housing.<sup>17</sup> The term 'centre' refers to any place used for collective accommodation. The majority of EU Member States make use of collective facilities, which are in principle open facilities. Some Member States have established initial or so-called 'transit' centres, accommodating asylum-seekers while pending admissibility procedures. Others do not make any difference between these initial/transit centres and other accommodation centres. Asylum-seekers in transit centres have less access to community services, including education and health. This is of particular concern in the current situation, where across Europe many families and children are staying for too long in transit centres.

Thirteen EU Member States make use of private houses (including hotels and flats) in addition to collective accommodation. Moreover, while by law all Member States provide tailored accommodation for vulnerable persons, practices differ as to: who qualifies as vulnerable; whether they provide separate facilities for these persons or not; and the conditions they ensure.<sup>18</sup>

EU law related to reception conditions specifically mentions vulnerable groups such as children, unaccompanied and separated children, pregnant women, single parents, disabled persons, the elderly, and victims of trafficking, rape and/or other forms of severe violence or serious illness. For unaccompanied and separated children, EU law prescribes accommodation with adult relatives or a foster family; centres with special provisions for minors; or other accommodation suitable for minors. Elsewhere in Europe, non-EU Member States have similar regulations regarding housing.

## Accommodation standards

By the summer of 2016, the majority of refugees and migrants that arrived to Europe through the Mediterranean over the last year and a half are living in accommodation centres, formal and informal camps, hotels, hostels, private houses and flats. Many of them are staying for too long in transit centres, in overcrowded conditions and with limited privacy and access to certain services (e.g. education). Refugees and migrants sometimes even lack clean water and adequate access to sanitation and electricity. The health, dignity and safety of children among them is at risk.

It is thus crucial for States to improve the accommodation standards and make sure that they meet international and national requirements. The composition and dimensions of the facilities should be adequate and respect the right to privacy, safety and family life. They should include, at a minimum: sufficient surface area per person and family, with openings and ventilation;

separated safe spaces for women and girls; access to appropriate facilities for hygiene and sanitary needs that are separated by gender; access to water supplies, gas, and electricity; and, secure storage space for personal belongings. The facilities should be accessible for persons with disabilities.<sup>19</sup>

Health and safety standards should however always be interpreted in light of the best interests of the child, and not be used to justify any action that may cause further harm to children (i.e. dismantling informal camps without offering alternatives or placing children into closed centres). When clear national guidelines are missing, international standards should apply.<sup>20</sup>

**UNICEF calls upon States to ensure that housing standards for refugee and migrant children and women meet the health and safety requirements set by existing international and national standards.**

## Accommodation capacity

In parallel to improving standards, there is also a need to increase accommodation capacity. In many European States, asylum-seekers outnumber reception places and authorities have and still find it difficult to increase capacity and keep up standards. A few good practices tested by local and national authorities to decrease pressure on reception capacities include measures such as a sound policy of relocating asylum-seekers throughout the country; investing further resources to process asylum claims in a timely manner; and providing timely access to the labour market for asylum-seekers.

**States should develop strategies aimed at guaranteeing access to private housing and flats for families and their children. Collective facilities, no matter how well they are designed, are not suitable for long-term family dwellings.**

## Child safeguarding

Another important issue is child safeguarding rules since adequate housing does not limit itself to the physical conditions of the building. Child safety is crucial. All entities and individuals engaged in providing accommodation and services for refugees and migrants should receive due authorisation to do so from the competent authorities.

Recruitment screening procedures and codes of conduct should be mandatory for all staff, including police, immigration authorities, contractors and volunteers as part of general child safeguarding policies. Staff in contact with children should have clear responsibilities, access to regular training focusing on the skills required for their work, and be provided with managerial support and supervision.

There should be clear rules of accountability, as well as reporting mechanisms for any child protection concern and adequate follow-up procedures. Children and their families should receive information about complaint mechanisms and be able to use them without interference. Regular monitoring and review should be conducted by State agencies, including ombudspersons, and children's opinions given due weight in such processes.

**Safeguarding rules should be in place and staff in charge should receive adequate training, monitoring and support.**

<sup>17</sup> Reception Condition Directive, see supra n. 2.

<sup>18</sup> For a full discussion of asylum seekers' entitlements to reception accommodation see, EMN, Organisation of Reception Facilities in different Member States, 2014.

<sup>19</sup> In Germany, UNICEF has published a detailed manual on Minimum Protection Standards for Children, Adolescents and Women in Refugee Centres (UNICEF, Mindeststandards zum Schutz von Kindern, Jugendlichen und Frauen in Flüchtlingsunterkünften, 2016).

<sup>20</sup> See the Sphere Project, Humanitarian Charter and Minimum Standards in Humanitarian Response, Shelter and Settlement.



## Availability of facilities and services

In addition to safeguarding rules, a number of other conditions should be met, including availability of services, materials, facilities and infrastructure. Current accommodations for refugee and migrant families lack important services and facilities for children, such as specific spaces for young mothers with babies, child-friendly spaces providing opportunities for recreational activities to children and adolescents, spaces for religious and spiritual life, etc. Access to Wi-Fi, which facilitates access to information and helps maintain contacts with family members, friends and support social networks is also often not available.

In some States, children and families with children are asked to move from one accommodation to the other, based on the stage of their application. As these movements occur even several times a year, they make it difficult for children to attend school and socialise and they have a negative impact on the child's well-being and development. Children need stability and perspectives for the future. Adequate housing and access to education and other community-level services, from the very first moment of arrival, are key to their social inclusion.

**UNICEF calls upon States to ensure that children and their families have full access to education, health and all basic services, on equal grounds with national children. Separated services for refugee and migrant children should run in parallel to community services only when they provide additional support to the children (e.g. language classes, mental health support, etc.) or on a temporary basis (e.g. catch-up classes).**

## Support and guidance in integration



In order to access services and realise their rights, refugees and migrants need guidance and support. The challenges they face once in a destination country are large. Children count often on their parents for support, but language, culture, and lack of practical information can make it difficult for parents to understand their entitlements and the related procedures to claim them. Moreover, circumstances prior to and during the journey might have left invisible scars on parents, who should have access to psychosocial support and assistance with child care.

States should actively provide advice to refugee and migrant families on how to reach out and benefit from existing services that promote child, youth and family welfare. This role can be played by existing social services for children, youth and families. Municipal social services, but also migrant and diaspora organisations, volunteers, etc. can assist families by guiding them through entitlements, procedures and daily life in the destination country. The use of emergency funds at national and local level

and/or the development of new public-private partnerships could be explored to extend existing services.

**UNICEF calls upon States to invest in extending existing social services for children, youth and families. Refugee and migrant children as well as all other vulnerable children should equally benefit from the extended and improved services. Strong policies and services for refugee and migrant children mean strong policies and services for all children.**

## Family-based care for unaccompanied and separated children

Many of the unaccompanied and separated children arriving in Europe over the last 18 months have ended up staying for too long in residential care, without adequate access to services, care and support. Throughout Europe, initiatives of family-based care for unaccompanied and separated children exist, but they remain of a small scale and highly dependent on the good will of local public and private entities or individuals.<sup>21</sup>

Unaccompanied and separated children should benefit on an equal basis with national children from national legislation and mechanisms related to alternative care.<sup>22</sup> Child and youth welfare authorities should decide on the form of care for the child, based i.a. on the child's age, gender, cultural and religious upbringing, linguistic background. For children who have adult relatives or friends of the family arriving with them or already living in the country, kinship care should be supported, unless it is contrary to the best interests of the child. Kinship and foster families need to receive adequate training, guidance and support, including material support to fulfil their caring role. Existing good practices should be scaled up at the national level.

When the number of unaccompanied and separated children is high and the majority are adolescents, different forms of semi-independent living arrangements should be explored. Children and young persons, for example, can live alone or in a small group of peers, while assisted by qualified social workers to acquire the necessary competencies for autonomy in society. Group homes can be also an effective form of alternative care for unaccompanied and separated children. In such arrangements children are cared for in small groups (around 10 children), in a manner and under conditions that resemble those of an autonomous family, with one or more specific parental figures as caregivers, but not in the caregivers' usual domestic environment.<sup>23</sup>

Irrespective of care arrangements made for unaccompanied and separated children, regular supervision and assessment ought to be undertaken by qualified professionals in order to ensure the child's physical and psychosocial health, protection against domestic violence or exploitation, and access to educational and vocational training opportunities. Children must be kept informed and consulted on any care arrangements being made for them.<sup>24</sup>

For unaccompanied and separated children, UNICEF calls upon States to give preference to family-based care, in accordance with the child's best interests.

21 NIDOS, Reception and living in families: Overview of family-based reception for unaccompanied minors in the EU Member States, 2015.

22 Guidelines for the Alternative Care of Children, A/Res/64/142; see also Cantwell, N.; Davidson, J.; Elsley, S.; Milligan, I.; Quinn, N. (2012). Moving Forward: Implementing the 'Guidelines for the Alternative Care of Children'. UK: Centre for Excellence for Looked After Children in Scotland.

23 For further on definition see: Violence Against Children in Care and Justice Institutions, UNICEF.

24 Committee on the Right of the Child, General Comment no.6 on Treatment of unaccompanied and separated children outside their country of origin, 2005.