

# Refugee and Migrant CRISIS IN EUROPE

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## Protecting the Rights of Refugee and Migrant Children

Refugee and migrant children are first and foremost children with rights protected by the Convention on the Rights of the Child. The Convention on the Rights of the Child puts forth the human rights standards applicable to all children. These precepts do not change when a child crosses borders, and must be applied in all circumstances, and regardless of the child's nationality, residency, international protection or migratory status.

The child's best interests should be a primary consideration in all decisions concerning her/him. Children's best interests should be at the forefront of all decisions that affect them in every situation, in all steps of the process including reception, repatriation, return and reintegration, and all other aspects of their lives. A determination of what is in the best interests of the child requires a multi-disciplinary and comprehensive assessment by trained professionals of the child's particular circumstances, vulnerabilities and protection needs.<sup>1</sup>

Criteria for being considered a refugee are broader for children than for adults; children's cases should therefore be examined in their own right, not only as part of a family unit. The refugee definition must be interpreted in an age and gender-sensitive manner, taking into account the particular motives for, and forms and manifestations of, persecution experienced by children including under-age recruitment; exploitation or subjection to early marriage or female genital mutilation.

Children who fear being persecuted have a right to claim international protection. This right applies to each child who "owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of [her/his] nationality, and is unable to, or owing to such fear, is unwilling to avail himself of the protection of that country."<sup>2</sup> Asylum-seeking children shall enjoy access to prompt and efficient procedures and other complementary mechanisms providing international protection, irrespective of their age, and be prioritized in these procedures. Children for whom there is no indication of a need of international protection shall be protected pursuant to other relevant child protection mechanisms.

Family unity and prevention of family separation are to be safeguarded at all times, in all decisions taken. A child shall not be separated from his or her parents against their will. Decisions in favor of the child should therefore benefit other family members by extension rather than be used as a reason for separating the child from the family.



<sup>1</sup> For additional information, see the General Comment of the Committee on the Rights of the Child on the treatment of unaccompanied and separated children outside their country of origin (General Comment 6, 2005). The General Comment is the source for many of the provisions mentioned in the present document.

<sup>2</sup> 1951 Refugee Convention, article 1



Children and families shall not be returned to a country where there is a risk of human rights violations to the child or the family (principle of non-refoulement<sup>3</sup>). Children have to be protected against refoulement and the risk of chain refoulement – i.e. the risk for children to be ultimately unlawfully returned to their country of origin. Returning a refugee to a third country creates a risk of ‘chain refoulement’.

### Refugee and migrant children and families must not be criminalized.

States should ensure that refugee and migrant children and their families are not criminalized solely for reasons of illegal entry or presence in the country<sup>4</sup>.

Age assessment should be carried out in a manner that is multi-disciplinary, culturally appropriate and overseen by the child’s guardian.

Age assessment should not only take into account the physical appearance of the individual, but also his or her psychological maturity. Moreover, the assessment must be conducted in a scientific, safe, child and gender-sensitive and fair manner, avoiding any risk of violation of the physical integrity of the child. In the event of continuing uncertainty, the child should be accorded the benefit of the doubt.

Refugee and migrant children should be protected against violence and exploitation, in particular trafficking. The State has a responsibility to protect all children, including refugee and migrant children, against violence by law-enforcement authorities and violence, including gender based, associated with mobility and overcrowded living situations, including trafficking associated with sexual and other exploitation, exploitative child labour and abuse by smugglers.

Refugee and migrant children must have non-discriminatory access to national services, including health, education, social protection and child protection systems. Refugee and migrant children have the same rights as all other children without any discrimination. They should be provided with access to all services in countries where they find themselves, as all other children. State obligations under the Convention on the Rights of the Child apply to each child within the State’s territory and to all children subject to its jurisdiction.



Refugee and migrant children must not be detained due to their migratory status (either criminally or administratively). Detention cannot be justified solely on the basis of the child being unaccompanied or separated, or on their migratory or residence status, or lack thereof, or on the migratory or residence status of their parents.

If heard in administrative or judicial proceedings, children must be heard by specialized professionals using child-sensitive proceedings. Children must not be processed through the same justice or administrative system as adults. They should receive legal support.

Legal guardians should be appointed to support unaccompanied and separated immediately upon identification. If relevant, such guardianship arrangements should be maintained until the child has either reached the age of majority or has permanently left the territory and/or jurisdiction of the State. The guardian should be consulted and informed regarding all actions taken in relation to the child.



<sup>3</sup> 1951 Refugee Convention, article 33  
<sup>4</sup> 1951 Refugee Convention, article 31 (1)